

No. 5970

Vol  
2118

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IN THE  
United States  
Circuit Court of Appeals  
For the Ninth Circuit

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HURON HOLDING CORPORATION, a corporation,  
*Appellant,*

vs.

LINCOLN MINE OPERATING COMPANY,  
a corporation, *Appellee.*

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Transcript of the Record

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*On Appeal from the District Court of the United States for the District of Idaho, Southern Division.*



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*Appellee.*

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Transcript of the Record

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*On Appeal from the District Court of the United States for the District of Idaho, Southern Division.*

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

---

JESS HAWLEY,  
OSCAR W. WORTHWINE,  
Boise, Idaho

Attorneys for Appellant.

WILLIAM H. LANGROISE,  
ERLE H. CASTERLIN,  
Boise, Idaho

Attorneys for Appellee.

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(Removed from State Court)

IN THE DISTRICT COURT OF THE  
SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR  
THE COUNTY OF GEM.

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NOTICE

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Filed in the State Court

July 17, 1936

TO THE ABOVE NAMED PLAINTIFF AND  
TO W. H. LANGROISE, ESQUIRE, AND  
SAM S. GRIFFIN, ESQUIRE, THEIR AT-  
TORNEYS:

PLEASE TAKE NOTICE, that the defendant  
Manufacturers Trust Company herein will on July  
17, 1936, file in the above entitled court its petition  
and bond for the transfer and removal of the above  
entitled action from the court wherein said cause is  
now pending into the District Court of the United  
States, for the District of Idaho, Southern Division,  
a copy of which petition and bond are herewith served  
upon you, and in accordance with and pursuant to

said petition and bond, will, on Monday, July 27, 1936, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, present the same to the Honorable John C. Rice, Judge of the above entitled court in his chambers of said court at Caldwell, Canyon County, Idaho, and pray for an order approving said bond and removing said cause to said District Court of the *of the* United States for the District of Idaho, Southern Division.

Dated this 17th day of July, 1936.

HAWLEY & WORTHWINE

HAWLEY & WORTHWINE

Residence: Boise, Idaho

Attorneys for Defendants.

Service by receipt of copy of the foregoing notice and papers therein referred to, is hereby admitted this 17th day of July, 1936.

W. H. LANGROISE

W. H. LANGROISE

SAM S. GRIFFIN

SAM S. GRIFFIN

Attorneys for Plaintiffs.

(Title of Court and Cause)

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PETITION FOR REMOVAL

Filed in the State Court

July 17, 1936.

TO THE HONORABLE THE DISTRICT  
COURT OF THE THIRD JUDICIAL DIST-  
RICT OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF GEM:

COME NOW, Your Petitioner Manufacturers Trust Company, a corporation, created, organized and existing under and by virtue of the laws of the State of New York, a resident and citizen of the State of New York, with its principal place of business being in New York City, said State of New York, and respectfully shows and represents to this honorable court:

I.

That this is a suit of civil nature and that the amount in dispute between the plaintiff and the defendants exceeds, exclusive of interest and costs, the sum or value of \$3,000.00. That this is an action brought and maintained by the plaintiff to secure a judgment against the defendants for the recovery of personal property alleged to be wrongfully detained by the defendants, or in lieu thereof, \$55,000.00 al-

leged to be the value of said property together with the damages for detention of said property and costs of suit and other wrongful purposes in their possession, as more fully appears from the plaintiff's complaint on file herein.

## II.

That the said action was commenced in the above entitled court on the 29th day of June, 1936, and that Summons was issued out of said court in said cause and served on the 29th day of June, 1936, on Lillian M. Campbell, Auditor and Recorder of Gem County, State of Idaho; under the claim that service on said Auditor and Recorder is service upon the said defendant corporation and service was also had on said date upon the defendant, Fred Turner; that the time of appearance on the part of the defendants has not expired; that the defendant, Manufacturers Trust Company, has appeared specially in said action. The Defendant, Alexander Lewis, has not been served.

## III.

That the District Court of the United States, in and for the District of Idaho, Southern Division thereof, has original jurisdiction of this action, and that your petitioner desires that said action be removed from the court wherein it is now pending into the said District Court of the United States, for the District of Idaho, Southern Division.

## IV.

That your petitioner avers that at the time of the commencement of this action, and ever since, the plaintiff, has been and now is, citizen and resident of the State of Idaho; that the defendant, Manufacturers Trust Company, a corporation, at the time of the commencement of this action, and ever since, has been and now is, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and is not now, and never has been a resident or citizen of the State of Idaho, but is a resident and citizen of the State of New York; and the defendant, Fred Turner, is a citizen and resident of Gem County in the State of Idaho, and the defendant, Alexander Lewis is a citizen and resident of the State of New York.

## V

Your petitioner avers that the defendant, Fred Turner, has no interest in this controversy and is in fact not a claimant to or owner of the personal property described and involved in the said complaint, and is merely an employee of the Huron Holding Corporation, organized and existing under and by virtue of the laws of the State of New York, and a citizen and resident of the State of New York, and said corporation is not a party defendant to this action. That the said defendant, Fred Turner, makes no claim to said property or other possessions thereof in his individual capacity, or otherwise as an employee of said

Huron Holding Corporation; That the said defendant, Fred Turner, is neither officer, director or stockholder of or in said Huron Holding Corporation, but the said, Fred Turner, is not a proper party defendant and is in no wise interested in the property described and the plaintiff is entirely separable, unconnected with, and the plaintiff is entirely separable, unconnected with, and apart from any controversy or issue of law or fact between the plaintiff and your petitioner. That, therefore, your petitioner avers that this controversy and every issue of law and fact therein is between citizens and residents of different states, and that more than \$3,000.00, exclusive of interest and costs, is involved herein.

## VI

Your petitioner offers herewith a bond with good and sufficient surety for its entry in said District Court of the United States, in and for the District of Idaho, Southern Division, sitting at Boise, Idaho, within thirty days from the *the* date of filing this petition, a certified copy of the record in this suit and for paying all costs that may be awarded by said District Court of the United States, if said District Court of the United States shall hold that such suit was wrongfully and/or improperly removed thereto, and as provided by the statutes of the United States in such cases made and provided.

Your petitioner prays this court to proceed no further herein except to make the order of removal

as required by law and the statutes of the United States, and to accept and approve said bond and surety, and to cause the record herein, as aforesaid, to be removed into the District Court of the United States, in and for the District of Idaho, Southern Division.

And your petitioner will ever pray.

HAWLEY & WORTHWINE

HAWLEY & WORTHWINE

Residence: Boise, Idaho,  
Attorneys for Petitioner.

STATE OF IDAHO, }  
COUNTY OF ADA } ss.

JESS HAWLEY, being first duly sworn, upon his oath, deposes and says:

That he is one of the attorneys for Manufacturers Trust Company, a corporation, the defendant, and makes this verification for and on behalf of the said defendant for the reason that all of the officers of the said Manufacturers Trust Company, a corporation, are absent from Ada County, State of Idaho, where affiant resides; that the facts set forth in the foregoing petition are within affiant's knowledge; that affiant has read the foregoing petition and knows the contents thereof; and that the facts stated therein are true to his own knowledge.

JESS HAWLEY.

Subscribed and sworn to before me this 17th day of July, 1936.

(SEAL)

WALTER G. BELL

Notary Public for Idaho Residing  
at Boise, Idaho.

Service by receipt of copy acknowledged this 17th day of July, 1936.

W. H. LANGROISE

SAM S. GRIFFIN

Atty. for Plft.

Boise, Idaho

---

(Title of Court and Cause)

---

BOND OF REMOVAL

Filed in the State Court

July 17, 1936

KNOW ALL MEN BY THESE PRESENTS,  
That Manufacturers Trust Company, a corporation,  
as principal, and National Surety Corporation, a corporation,  
as surety (said surety being duly and fully authorized under the acts of Congress and laws of the State of Idaho) are held and firmly bound unto the above named plaintiff, Lincoln Mine Operating Company, a corporation, in the sum of Five Hundred Dol-



lars (\$500.00), for the payment of which well and truly to be made unto the said named plaintiff and its assigns, it binds itself, its heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents; upon condition nevertheless that

WHEREAS, the above named plaintiff has heretofore brought a suit of civil nature in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Gem, against Manufacturers Trust Company, a corporation, Alexander Lewis, and Fred Turner, defendants; and,

WHEREAS, the said defendant, Manufacturers Trust Company, simultaneously with the filing of this bond, intends to file its petition in said suit in such state court for the removal of such suit into the District Court of the United States for the District of Idaho, Southern Division, the District in which the said suit is pending according to the provisions of the Acts of Congress in such case made and provided.

NOW, THEREFORE, the condition of this obligation is that if the said petitioner shall enter in the District Court of the United States for the District of Idaho, Southern Division, within thirty days from the date of the filing of said petition, a certified copy of the record in such suit and shall pay all costs that may be awarded by the said District Court if said court shall hold that said suit was wrongfully and/or improperly removed thereto, and shall also appear

and enter special bail in such suit if special bail was originally requisite therein, then the above obligation shall be void, but shall otherwise remain in full force and virtue.

Dated this 17th day of July, 1936, at Boise, Idaho.

MANUFACTURERS TRUST  
COMPANY, a corporation,

By JESS HAWLEY

One of its attorneys

(CORPORATE SEAL)

NATIONAL SURETY COR-  
PORATION, a corporation,

By F. G. ENSIGN

FRANK G. ENSIGN,

Its Attorney in fact.

Countersigned:

F. G. ENSIGN

FRANK G. ENSIGN,

Resident Agent,

Residing at Boise, Idaho.

Service by receipt of copy acknowledged July 17,  
1936.

SAM S. GRIFFIN

W. H. LANGROISE

Attys. for plft.

Boise, Idaho.

(Title of Court and Cause)

---

**ORDER OF REMOVAL**

Filed in the State Court

August 4, 1936

The petition for removal in the above entitled cause coming on regularly for hearing, this 27th day of July, 1936, before the Honorable John C. Rice, in his chambers in the Court House of Canyon County, at Caldwell, Idaho.

It is hereby **ORDERED** that the said cause shall be removed to the District Court of the United States for the District of Idaho, Southern Division, and the Clerk of the above entitled cause is hereby ordered to make proper, necessary certification and delivery of the record herein.

Dated this 27th day of July, 1936.

**JOHN C. RICE**

**JOHN C. RICE**

District Judge.

IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF  
IDAHO, SOUTHERN DIVISION

---

LINCOLN MINE OPERATING COMPANY, a  
corporation, Plaintiff,

vs.

MANUFACTURERS TRUST COMPANY, a  
corporation, HURON HOLDING CORPORA-  
TION, a corporation, ALEXANDER LEWIS  
and FRED TURNER, Defendants.

---

No. 1953

AMENDED COMPLAINT

Filed August 17, 1937

COMES NOW, the plaintiff, and with permission of the Court files this its Amended Complaint, and complains of defendants, and for a cause of action alleges:

I.

That at all times hereinafter mentioned, plaintiff Lincoln Mine Operating Company was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Idaho;

## II.

That at all times hereinafter mentioned, defendant Manufacturers Trust Company was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York, and has been for more than a year last past, and now is, doing business within the County of Gem, State of Idaho; that said corporation does not have any designated person actually residing in said Gem County, Idaho or within the State of Idaho, upon whom process can be served as provided by the laws of Idaho; that at all times hereinafter mentioned defendant Huron Holding Corporation was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York, and has been for more than a year last past, and now is, doing business within the County of Gem, State of Idaho; that said corporation does not have any designated person actually residing in said Gem County, Idaho, or within the State of Idaho, upon whom process can be served as provided by the laws of Idaho;

## III.

That at all times herein mentioned, plaintiff Lincoln Mine Operating Company was the owner and entitled to the possession of that certain personal property more specifically and in detail set forth and described in Exhibit A hereunto attached, and by this reference made a part hereof, now, and at all times herein mentioned, situate in and upon that certain

group of lode mining claims commonly known as the Lincoln Mine, in the West View Mining District, Gem County, Idaho; that said personal property is of the reasonable value of \$55,000.00;

#### IV

That on or about the 4th day of June, 1936, and before the commencement of this action, the defendants having possession of said property, the plaintiff demanded of the defendants the possession of said personal property, but the defendants refused and still refuse to deliver the possession thereof to plaintiff, and said personal property has been, and now is, wrongfully detained by defendants; that the cause of the detention thereof by defendants is unknown to the plaintiff;

#### V.

That said personal property has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under execution or an attachment against the property of the plaintiff;

#### VI.

That by reason of the foregoing plaintiff has been damaged by defendants in the sum of \$55,000.00, the value of said property, and in the additional sum of \$100 per day for each and every day so wrongfully detained, as aforesaid, by the defendants.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, for the recovery of

said personal property, or for the sum of \$55,000.00, the value thereof, in case a delivery cannot be had, together with damages for its detention, for costs of suit, and all other relief proper in the premises.

W. H. LANGROISE

SAM S. GRIFFIN

Attorneys for Plaintiff,

Residence: Boise, Idaho.

STATE OF IDAHO, }  
COUNTY OF ADA. } ss.

WILLIAM I. PHILLIPS, Being first duly sworn. deposes and says:

That he is the President of the Lincoln Mine Operating Company, a corporation, plaintiff in the above entitled cause, and makes this verification as such officer and in its behalf; that he has read the foregoing Complaint, knows the contents thereof, and believes the facts therein stated to be true.

WILLIAM I. PHILLIPS

SUBSCRIBED AND SWORN to before me this 12th day of August, 1937.

L. L. SULLIVAN

Notary Public for Idaho, Residing at Boise, Idaho.

(SEAL)

EXHIBIT "A"

1 Cook stove—Tennessee Range.

1 Kelvinator No. 1267 with Wagner 1½ H. P. Motor No. 8-1761-2 and Cutler-Hammer Electric Starter.

2 Common chairs.

1 Iron bed with springs and mattresses.

1 Wash stand.

3 Wooden dining tables.

1 Small table.

8 Wooden benches.

1 Kitchen serving table.

2 Kitchen work tables.

1 Kitchen work table with flour bins.

1 Kitchen work table with shelves.

1 Copper wash boiler.

3 Granite Kettles.

5 Pot covers.

1 Granite stew pan—large.

1 Enamel stew pan—large.

6 Granite stew pans—small.

6 Enamel stew pans—small.

1 Large iron skillet.

6 Large iron baking pans.

5 Small iron baking pans.

3 Medium iron skillets.

1 Iron pan cake plate.

2 Tin cream buckets.

1 Meat grinder—Enterprise No. 10.

1 Small spring scale.

34 Tin Bread pans.

4 Small skillets.



- 17 Glass tumblers.
- 35 Enamel soup bowls.
- 4 Enamel sugar bowls.
- 3 Aluminum water pitchers.
- 4 Enamel milk pitchers.
- 4 Aluminum syrup pitchers.
- 25 Table spoons.
- 46 Table spoons.
- 46 Tea spoons.
- 26 Wood handle table knives.
- 36 Wood handle table forks.
- 12 Metal handle table knives.
- 9 Metal handle table forks.
- 7 Medium size coffee pots.
- 5 Medium size tea pots.
- 13 Enamel vegetable dishes.
- 7 Enamel meat platters.
- 30 China dinner plates.
- 26 Medium enamel cups.
- 11 Tall enamel cups.
- 29 Tin lunch buckets.
- 1 Granite roaster.
- 1 Small galvanized wash tub.
- 6 Granite kettles.
- 1 Large soup boiler.
- 2 Clothes wringers.
- 1 Glass oil lamp.
- 1 Stone jar—4 gal.
- 1 Large Galvanized tub.
- 1 Large iron meat roaster.

- 1 Large granite coffee pot.
- 5 Ladles.
- 4 Large cooking spoons.
- 1 Egg beater.
- 2 Dish pans.
- 1 Fruit strainer.
- 1 Galvanized bucket.
- 1 Meat cleaver.
- 2 Butcher knives.
- 1 Butcher steel.
- 1 Heating stove.
- 8 Double cots.
- 21 Single cots.
- 13 Khaki mattresses.
- 22 Plain mattresses.
- 1 Heating stove.
- 2 Iron beds with springs and mattress.
- 2 Iron cots with one mattress.
- 1 Bureau.
- 1 Rocking chair.
- 1 Dining table.
- 2 Small tables.
- 1 Box telephone.
- 1 Phanstiel Radio—without tubes or batteries.
- 1 Heating stove.
- 1 Electric cooking stove.
- 1 Coal cook stove.
- 1 Hot water tank with Electric heater.
- 1 Iron bed with springs and mattress.
- 2 Iron cots with khaki mattresses.

- 4 Straight chairs.
- 1 Iron bed with springs.
- 1 Wooden table.
- 1 Coal cook stove.
- 1 P. H. & F. M. Root Co. Air Blower Size #1,  
Serial #38122.
- 2 McIntosh Pneumatic Flotation Cells.
- 1 Thickener Mechanism 8' x 7'.
- 1 Oil Feeder.
- 1 Grizzley.
- 1 Portland Filter 8' x 8' with Doak Vacuum Pump.
- 1 Pahrenwald Classifier.
- 1 Model C Door Duplex Classifier.
- 1 Marcy Ball Mill.
- 1 Door Thickener 24' x 6'.
- 1 U. S. Motor 75 H. P. #17843.
- 1 Westinghouse Motor 15 H. P. #455104 with  
Starter, #30150.
- 1 General Electric Motor 3 H. P. #4989551.
- 1 Westinghouse Motor 30 H. P. #579472.
- 1 General Electric Motor 3 H. P. #244734.
- 1 Westinghouse Auto Starter Style 5877.
- 1 Westinghouse 5 H. P. Motor #3925759.
- 1 Cutler-Hammer Auto Starter #91414475.
- 1 General Electric Auto Starter #456075 with fuse  
block.
- 4 Knife switch in mill office on power line.
- 1 Knife switch in mill office on light line.
- 1 General Electric oil breaker type Fk20T.
- 1 Westinghouse auto starter #30151A with knife

switch.

- 1 Althoff Mfg. Co. Compressor.
- 1 Nat'l Brake & El. Co. air compressor.
- 1 Swaby centrifugal pump #2.
- 6 Union iron works centrifugal pump #2.
- 1 Dorreo pump #616M filter.
- 1 Centrifugal pump #1-32A1172.
- 2 3" rubber belts.
- 15 4" rubber belts; 1 5" rubber belt.
- 2 6" rubber belts.
- 1 7" rubber belt.
- 1 10" rubber belt.
- 1 12" rubber belt.
- 1 14" rubber conveyor belt.
- 1 5 x 18 Jack.
- 1 Champion blacksmith forge and hand blower.
- 1 Vise #624.
- 1 F. E. Well Sons Co. pipe vise 242.
- 1 Chain block.
- 1 Iron wheel barrow.
- 1 8 gallon burner tank complete with piping.
- 1 Laundry stove.
- 1 Electric 2 burner hot plate.
- 1 Iron bed and springs with 3 mattresses.
- 1 Galvanized iron wash tub.
- 1 Analytical balance #31 with weights.
- 1 Fairbanks Morse 1 H. P. Motor #205628. Direct connected with Swaby Centrifugal Pump size No. 1, Serial #48284.
- 1 General Electric 15 H. P. Motor #4949377.

- 1 General Electric 5 H. P. Motor #5036477.
- 1 General Electric 7½ H. P. Motor #4150795 with Krogh Centrifugal Pump.
- 1 General Electric 1 H. P. Motor #1170103.
- 1 Type C Trumbull El. switch #40321.
- 1 Type C Trumbull El. switch #40323.
- 1 General Electric starting compensator #201501-404.
- 1 Type A Trumbull Electric switch #72351C.
- 1 Gen. Elect. Magnetic switch cat. #365224504.
- 1 Cutler-Hammer switch #10036H 16.
- 1 Allis-Chalmers 125 H. P. Motor #115056 with starter.
- 1 Trumbull Type C El. starter #40354.
- 1 Trumbull Type A El. starter #72354.
- 1 Allis-Chalmers 75 H. P. Slip Ring Motor #113229 with Westinghouse Controller.
- 1 Box telephone.
- 1 Small rope block and tackle.
- 1 Wood plane.
- 1 Steel square.
- 1 Hammer.
- 1 Brace.
- 1 Chain wrench.
- 2 Jacks.
- 1 Wheel puller.
- 1 Bench vise.
- 6 Copper oil cans, qts.
- 4 19" Stillson wrenches.
- 2 20" Stillson wrenches.

- 2 36" Stillson wrenches.
- 1 10" Stillson wrenches.
- 1 Electric drill type N. T. No. 29036.
- 1 Steel plane.
- 3 Iron wheel barrows.
- 1 Toledo No. 2 pipe threader #7654.
- 1 Toledo No. 1A pipe threader #52072.
- 1 Trimo No. 2 pipe cutter.
- 1 Oswego S. 4T.
- 1 Pipe vise No. 2 Armstrong.
- 1 Toledo No. 5 pipe threader.
- 1 Rope block and tackle 2 shives.
- 1 Yale chain block 1½ ton.
- 2 12" Crescent wrenches.
- 1 8" Crescent wrenches.
- 1 10" Crescent wrenches.
- 3 Backsaws.
- 2 Screw drivers.
- 2 Flue cleaners.
- 3 10" S. Wrenches.
- 1 6" S. Wrenches.
- 2 8" S. Wrenches.
- 2 10" monkey wrenches.
- 1 18" monkey wrenches.
- 1 Pair pliers.
- 2 Ballpein hammers.
- 1 Allis-Chalmers centrifugal pump with 100 H. P. Motor.
- 1 Lead Cable in shaft about 725'.
- 1 Clock 8 day.

- 1 14" Cr. Knight leather belt 66' 14".
- 1 Ogden Iron works mine car.
- 1 Tonax mine car.
- 2 Mine cars—rebuilt.
- 3 100 KVA single phase 60 cycle 2300 to 230-460V with lightning arrestors, cut outs, etc.
- 1 Road ditcher.
- 1 Gen. Elect. 15 H. P. Motor #3772155.
- 1 Fairbanks Morse 5 H. P. Motor #69359 with Swaby No. 2 centrifugal pump #41640.
- 1 Westinghouse 30 H. P. Motor #579469.
- 1 Trumbull Type C elect. switch.
- 1 Westinghouse elect. auto starter #90851.
- 1 General Electric 5 H. P. Motor #1343138.
- 1 24" circular rip saw.
- 1 36" cut off saw.
- 3 6" rubber belts.
- 1 4" rubber belt.
- 8 Bits.
- 1 Saw set.
- 1 Extension bit.
- 2 42" one man cross cut saws.
- 1 Auger machine.
- 2 Peevies.
- 1 Cant hook.
- 2 10" Framing chisels.
- 1 Foot adze.
- 1 Saw holder.
- 2 Scoop shovels.
- 1 Fork.

- 1 Large anvil.
- 1 Small anvil with compressed air hammer.
- 1 Westinghouse auto starter #30151A.
- 1 American centrifugal blower No. 5.
- 1 No. 2 little giant stocks and dyes for threading bolts.
- 1 Set 12 blacksmith tongs.
- 1 Blacksmith vise.
- 6 Axes.
- 8 Single jack hammers.
- 5 Double jack hammers.
- 10 Mine shovels.
- 16 Mine picks.
- 1 Mattock.
- 1 Westinghouse 3 H. P. Motor #1471283.
- 1 Trumbull type C starter #40351.
- 3 4" rubber belts.
- 2 Ogden iron works ore car.
- 1 Grindstone #1 Schofield.
- 1 Rope block and tackle 2 shives.
- 1 Gen. Elec. 5 H. P. Motor #4586524 with centrifugal air blower.
- 1 Trumbull Safety electric switch #723570.
- 1 Trumbull Type C electric switch #40852.
- 1 Ore skip.
- 1 Dodge sedan.
- 2 Sets enamel ware bowls and pitchers.
- 1 Large mirror.
- 1 Large Bedroom mirror.
- 2 Small bedroom mirrors.



- 1 Dining table.
- 1 Oak rocking chair.
- 4 Straight chairs.
- 1 Iron bed with springs and mattress.
- 1 Fiber furniture set—davenport and 2 chairs.
- 8 Window shades and rods.
- 1 Electric cooking stove.
- 1 Howard heating stove.
- 1 Welding and cutting outfit complete.
- 1 Desk lamp.
- 2 Phaman fire extinguishers.
- 1 Elkhart fire extinguisher.
- 3 Pyrena fire extinguishers.
- 4 1 T P Miners lamps—new.
- 1 Desk telephone.
- 1 Pair lineman's climbers.
- 1 Desk chair.
- 4 Common chairs.
- 1 Burroughs adding machine.
- 1 Desk.
- 2 Steel letter transfer files.
- 1 Todd protectograph.
- 1 Steel office safe #5119.
- 1 No. 5 Underwood typewriter.
- 2 Heating stoves.
- 1 Bureau.
- 1 Rocking chair.
- 1 Dining table.
- 2 Electric 2-burner hot plate.
- 1 Analytical balance #31 with weights.

- 1 Box telephone.
- 1 Block-8 day.
- 1 2" Sand pump.
- 1 Platform scale.
- 1 Balance scale.
- 3 Furnaces.
- 1 Rail Bender.
- 1 Surveyors transit.
- 1 Compressor.
- 1 Pumping Plant.
- 1 Kelvinator.
- 1 Substalin, including 4-150 K. V. A. Transformers.

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(Title of Court and Cause)

---

NOTICE OF REMOVAL OF CAUSE AND  
FILING OF RECORD IN THE UNITED  
STATES DISTRICT COURT.

---

Filed August 24, 1936

TO W. H. LANGROISE, ESQUIRE, and SAM  
S. GRIFFIN, ESQUIRE, ATTORNEYS FOR  
THE PLAINTIFF ABOVE NAMED:

YOU ARE HEREBY NOTIFIED That on  
the 30th day of August, 1936, by an order of the

District Court of the Seventh Judicial District of the State of Idaho, in and for Gem County, the above entitled cause was duly removed from said court to the District Court of the United States for the District of Idaho, Southern Division, and that the transcript of the record in said cause was filed in the said District Court of the United States on the 24th day of August, 1936.

Dated this 3d day of August, 1936.

**HAWLEY & WORTHWINE,**  
Residence: Boise, Idaho,  
Attorneys for Defendants, appearing specially.

**COPY RECEIVED** and service accepted  
this 24th day of Aug., 1936.

**SAM S. GRIFFIN**  
**W. H. LANGROISE**  
Attorneys for Plaintiff.

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(Title of Court and Cause)

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**SUMMONS**

Filed Aug. 23, 1937

**THE PRESIDENT OF THE UNITED STATES OF AMERICA SENDS GREETINGS TO THE ABOVE NAMED DEFEND-**

**ANTS, HURON HOLDING CORPORATION  
AND ALEXANDER LEWIS.**

You, and each of you, are hereby notified that an amended complaint has been filed against you in the District Court of the United States for the District of Idaho, Southern Division, by the above named plaintiff, and you are hereby directed to appear and plead to said amended Complaint within twenty (20) days of the service of this Summons; and you are further notified that unless you so appear and plead to said amended Complaint within the time herein specified, the plaintiff will take judgment against you as prayed in said amended Complaint.

WITNESS My hand and the seal of said District Court this 17th day of August, 1937.

(Seal)                      W. D. McREYNOLDS, Clerk.

**W. H. LANGROISE  
SAM S. GRIFFIN**

Attorneys for Plaintiff,  
Residence and Portoffice  
Address: Boise, Idaho.

**DISTRICT COURT OF IDAHO }  
SOUTHERN DIVISION        } ss.**

I HEREBY certify and return that I received the annexed Summons on the 17th day of August, 1937; that I was unable to find in the district of Idaho any person designated by the Huron Holding Corpora-

tion, a corporation, named as defendant, upon whom process could be served as provided in Section 29-502 Idaho Code Annotated, nor could I find that said Huron Holding Corporation had ever qualified in Idaho nor designated any person within the State of Idaho, upon whom process could be served and I, therefore, served said Summons and a copy of the Amended Complaint upon the said Huron Holding Corporation, a corporation, by handing to and leaving with, Lillian M. Campbell, County Auditor of Gem County, State of Idaho, in which County I was informed said Huron Holding Corporation, defendant, was doing business in the State of Idaho, a true copy of said Summons and a copy of the Amended Complaint in said action, at Emmett, Gem County, Idaho, on the 18th day of August, 1937.

I further certify and return that after due and diligent search I am unable to find the defendant Alexander Lewis within the District of Idaho.

In witness whereof I have hereunto set my hand this 18th day of August, 1937.

GEORGE A. MEFFAN

UNITED STATES MARSHALL

By John H. Glenn

United States Deputy Marshal.

(Title of Court and Cause)

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MOTION TO QUASH SERVICE OF  
SUMMONS AND DISMISS THE ACTION

Filed September 13, 1937

COMES NOW, Defendant, **Huron Holding Corporation**, a corporation, by its Attorneys, **Hawley & Worthwine**, and appearing specially and for the sole purpose of raising the question of jurisdiction of the court in moving to quash service of summons, and not generally, or for any other purpose whatsoever, and does respectfully show the court:

I.

That **Huron Holding Corporation** is a corporation created, organized, and existing under and by virtue of the laws of the State of New York, and is a resident and citizen of the State of New York; that the said corporation is not now, nor at any other time has it been doing business in the State of Idaho.

II.

That service of summons and complaint in this case was attempted to be made on the defendant, **Huron Holding Corporation**, a corporation, by personal service thereof on August 18, 1937, on **Lillian M. Campbell**, Auditor and Recorder of Gem County, State of Idaho, in Gem County, State of Idaho.

That the said Auditor and Recorder above named

so served with summons and complaint, as aforesaid, was not on August 18, 1937, or any other time, and is not now the agent or business agent transacting business for Huron Holding Corporation, a corporation, in the State of Idaho.

That said Huron Holding Corporation, a corporation, was not on August 18, 1937, or at any other time, and is not now doing business in the State of Idaho, and that service of summons and complaint on Lillian M. Campbell, Auditor and Recorder of Gem County, State of Idaho, did not constitute service on the said corporation; that the said Huron Holding Corporation, a corporation, has not been served with summons or complaint in this action in any lawful manner.

### III.

That this Honorable Court does not have jurisdiction of the defendant, Huron Holding Corporation, a corporation.

WHEREFORE, Hawley & Worthwine respectfully move that the purported service of summons on the said defendant, Huron Holding Corporation, a corporation, be quashed.

This motion is based upon the records and files in this action, including this motion.

Dated this 13th day of September, 1937.

HAWLEY & WORTHWINE

Residence: Boise, Idaho.

Attorneys for Huron Holding Corporation, a corporation, appearing specially.

STATE OF IDAHO, {  
County of Ada.        } ss.

OSCAR W. WORTHWINE, being first duly sworn, upon his oath, deposes and says:

That he is one of the attorneys for Huron Holding Corporation, a corporation, and makes this verification for and on behalf of the said corporation for the reason that all of its officers are absent from the County of Ada, State of Idaho, where affiant resides; that the facts set forth in the foregoing motion are within affiant's knowledge; that affiant has read the foregoing motion and knows the contents thereof; and that the facts stated therein are true to his own knowledge.

OSCAR W. WORTHWINE

SUBSCRIBED and sworn to before me this 13 day of September, 1937.

FRANCES HILL

(SEAL)

Notary Public for Idaho, Residing at Boise, Idaho.

(Service acknowledged September 13, 1937)



(Title of Court and Cause)

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STIPULATION FOR SUBMISSION OF  
MOTION TO QUASH SERVICE BY DE-  
FENDANT HURON HOLDING  
COMPANY

Filed Sep. 22, 1937.

IT IS STIPULATED AND AGREED By and between the attorneys for plaintiff and for defendant, Huron Holding Corporation, that the said defendant's Motion to Quash Service of Summons herein filed be, and the same is, submitted to the Court for decision upon said Motion, the records and files of said cause, including affidavits of James L. Fozard, Lester R. Bessell, Alexander Lewis, William I. Phillips and Ralph Shaffer, now on file, and all relevant and material exhibits, depositions, testimony and Bill of Exceptions in the case of Ojus Mining Company, plaintiff, versus Manufacturers Trust Company, and Alexander Lewis, defendants, #1833, Southern Division of the District of Idaho, the same being in the records and files of this Court, all of which foregoing shall be deemed to have been admitted in evidence or testified to in this cause in support of, and in opposition to, said motion.

IT IS FURTHER STIPULATED That the same conditions existed at the time of service of Summons on the County Recorder for Huron Holding

Corporation, as appear from the records, files and papers above referred to.

DATED this 22 day of September, 1937.

SAM S. GRIFFIN

W. H. LANGROISE,

Attorneys for Plaintiff,

Residence: Boise, Idaho.

HAWLEY & WORTHWINE,

OSCAR W. WORTHWINE

Attorneys for defendant, Huron

Holding Corporation.

Residence: Boise, Idaho.

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(Title of Court and Cause)

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## ORDER OVERRULING MOTION TO QUASH

Filed September 24, 1937

Upon submission, and after consideration,

IT IS ORDERED, That the Motion to Quash service of Summons filed by the Huron Holding Corporation, a corporation, defendant in the above cause, be, and the same hereby is, denied, and said defendant is granted an exception and sixty days from the date hereof within which to prepare, serve and file Bill of Exceptions.

DATED: September 24, 1937.

CHARLES C. CAVANAH

District Judge.

(Title of Court and Cause)

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ANSWER

Filed September 27, 1937

COMES NOW, The Defendant, HURON HOLDING CORPORATION, and for itself alone answering the amended complaint of the plaintiff herein does allege:

I

That this answering defendant is not doing business within the County of Gem, State of Idaho, or at all in the State of Idaho, and has never done business therein and has never been a resident of or within the State of Idaho, and is not subject to the jurisdiction of this court; that service of summons and complaint in this case was attempted to be made upon this answering defendant by service on Lillian M. Campbell, Auditor and Recorder of Gem County, in the County of Gem, State of Idaho; that said Auditor and Recorder was not on that date, or at any other time, and is not now the agent or business agent transacting business for this answering defendant in the State of Idaho; that this answering defendant has not been served with summons and complaint in this action in the manner required by the laws of the State of Idaho, and, therefore, is not within the jurisdiction of this court, all in violation of the Constitution of the United States of America, and particularly the 14th Amend-

ment thereto which provides that no state shall deprive any person of property without due process of law nor make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States.

## II.

This answering defendant denies the allegation set forth in paragraph II of said complaint, that for more than a year last past and now the said defendant is and was doing business within the County of Gem, State of Idaho.

## III.

This answering defendant denies the allegations set forth in paragraphs III, IV and VI of said complaint.

## IV.

For affirmative defenses this answering defendant alleges:

(a) That the plaintiff, if it ever had any right, title or interest in and to the property described in the said complaint, or any part thereof, did voluntarily abandon and surrender both the title and possession thereof more than three years prior to the date of the commencement of this action.

(b) That the plaintiff's cause of action is barred by the provisions of Sections 5-201 and 5-218 Idaho Code Annotated, which provides that a civil action can only be commenced for taking, detaining or in-

juring any goods or chattles, including actions for the specific recovery of personal property within three years before the cause of action accrues.

This defendant alleges that the cause of action if any the plaintiff ever had, accrued about the 25th day of April, 1933, and more than three years prior to the date of the commencement of this action, and, therefore, it is barred by the provisions of said statute of limitations of the State of Idaho.

WHEREFORE, the defendant prays judgment of this court:

(1) Dismissing the action on the ground that this court has not lawfully acquired jurisdiction thereof.

(2) That under the provisions of the 14th Amendment of the Constitution of the United States due process of law has not been had against the defendant, and its privileges and immunities have been abridged.

(3) That the Plaintiff has abandoned any title to or possession of the property described in the said complaint.

(4) That the plaintiff has not begun its action within the period prescribed for the commencement of action in the State of Idaho, and is barred by reason of the provisions of the statute of limitations of the State of Idaho.

(5) That the plaintiff take nothing by reason of its complaint and that this defendant shall be awarded

judgment for costs and disbursements herein incurred.

**HAWLEY & WORTHWINE**

Residence: Boise, Idaho,

Attorneys for Defendant, Huron Holding Corporation, a corporation, appearing specially.

(Duly verified.)

(Service Acknowledged September, 1937.)

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(Title of Court and Cause)

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**STIPULATION**

Filed Feb. 28, 1938.

**IT IS STIPULATED AND AGREED** That the following are facts, and, without objection, may be read and admitted in evidence upon the trial of the above entitled cause with the same effect as though testified to, or otherwise shown, by competent evidence therein.

Each of the defendants, Manufacturers Trust Company and Huron Holding Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York. Neither corporation has ever complied with the laws of the State of

Idaho, relating to, or required thereby for, the doing of business in Idaho by foreign corporation, and neither has, or has had, any designated person actually residing in Gem County, Idaho, or elsewhere in Idaho, upon whom process can be served as provided by the laws of Idaho.

On April 25, 1933, Jess Hawley put Gordon Smith in charge of said mine for the owner or owners thereof, and under the latter's direction one W. A. Harvey made, between April 27, and May 8, 1933, an inventory of personal property then on, at, in such mine, and includes property owned by plaintiff and defendants, a copy of which inventory is hereunto attached (except that penciled writing and check marks are not a part thereof) and may be introduced in evidence without further identification and without objection.

**IT IS FURTHER STIPULATED AND AGREED** That any and all proof, either by way of exhibits or oral testimony taken in connection with, or admitted in evidence in, an action heretofore pending in the above entitled Court for the District of Idaho, Southern Division, No. 1833, entitled Ojus Mining Company, a corporation, plaintiff, vs. Manufacturers Trust Company, a corporation, and Alexande Lewis, defendants, as the same may appear in the records and files of this court, or in the bill of exceptions appearing in the transcript of record in the Supreme Court of the United States in Ojus Mining Company, a corporation, petitioner, vs. Manufacturers

Trust Company, a corporation, and Alexander Lewis, respondents, or the reporter's transcript of testimony prepared by Leo Hamilton, may be used, read and admitted in evidence herein without further identification or offer, subject only to objections as to materiality or relevancy, with the same force and effect as though the witnesses were called herein, sworn, and testified in person herein.

W. H. LANGROISE

E. H. CASTERLIN

SAM S. GRIFFIN

Attorneys for Plaintiff, Lincoln  
Mine Operating Company, a corporation.

JESS HAWLEY

HAWLEY & WORTHWINE

Attorneys for defendants, Manufacturers Trust Company, a corporation, and Huron Holding Corporation, a corporation.

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(Title of Court and Cause)

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VERDICT

Filed March 3, 1938

We, the jury in the above entitled case, find for the plaintiff and assess its damages against the de-



fendant Huron Holding Corporation, in the sum of \$6730.70.

CARL BEESON,  
*Foreman.*

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(Title of Court and Cause)

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MINUTES OF THE COURT OF  
FEBRUARY 28, 1938

This cause came on for trial before the Court and a jury as to the defendants Manufacturers Trust Company, a Corporation, and the Huron Holding Company, a corporation, said defendants being represented by their counsel Jess B. Hawley, Esquire, and the plaintiff being represented by Messrs. W. H. Langroise and E. H. Casterlin. It was announced by counsel that the defendant Alexander Lewis was now deceased and that a disclaimer had been filed by and on behalf of the defendant Fred Turner.

The Clerk, under directions of the Court, proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper to secure a jury. Ben S. Eastman, J. W. Duquette and R. E. Newhouse whose names were so drawn, were excused on the plaintiff's peremptory challenge; and Fred Bailey and Ralph E. Leighton, Sr., whose names were likewise drawn, were excused

on the defendant's peremptory challenge.

Following are the names of the persons whose names were drawn from the jury box, who were sworn and examined on voir dire, found duly qualified, and who were sworn to well and truly try said cause and a true verdict render, to-wit:

Lester Moulton  
Claude C. Trobaugh  
W. H. Langford  
Clyde Dunn  
W. O. Patterson  
James W. Franklin  
Mark Johnson  
Simon Lind  
Gaylord R. Roberts  
Carl Beeson  
B. F. Car  
Floyd Commings

A statement of the plaintiff's case by its counsel was made and a stipulation of facts was entered into by counsel for the respective parties.

Elmer W. Fox was sworn and examined as a witness and documentary evidence was introduced on the part of the plaintiff.

After admonishing the jury, the Court excused them to ten o'clock A. M. on March 1st, 1938, and continued the trial to that time.

(Title of Court and Cause)

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MINUTES OF THE COURT OF MARCH 1,  
1938

The trial of this case was resumed before the Court and jury. Counsel for the respective parties being present, it was agreed that the members of the jury were all present.

Elmer W. Fox was recalled and further examined and William I. Phillips, George Shafer, Fred Turner and J. E. Parson were sworn and examined as witnesses and other evidence was introduced on the part of the plaintiff.

Further trial of the cause was continued to ten o'clock A. M. on March 2, 1938, and the members of the jury were excused to that time.

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(Title of Court and Cause)

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MINUTES OF THE COURT OF MARCH 2,  
1938

The trial of this cause was resumed before the Court and jury. Counsel for the respective parties being present, it was agreed that the members of the jury were all present.

J. E. Parson and Fred Turner were recalled and

further examined and F. J. Arnold was sworn and examined as witnesses and documentary evidence was introduced on the part of the plaintiff and here the plaintiff rests.

Fred Turner, W. A. Hooper and J. L. Fozard were sworn and examined as witnesses on the part of the defendants.

Whereupon the Court excused the jury to ten o'clock A. M. on March 3rd, 1938, and continued the trial to that time.

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(Title of Court and Cause)

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MINUTES OF THE COURT OF MARCH 3,  
1938

Counsel for the respective parties being present, the trial of this cause was resumed before the Court and jury. It was agreed that the members of the jury were all present.

The defendants' counsel announced that the defendants rested, and here both sides close.

The defendants' counsel moved the Court to dismiss the action as to each of the defendants. After hearing argument of the respective counsel on the motion, he announced his conclusions thereon, sustaining the motion and dismissing the action as to the defendant Manufacturers Trust Company, a corporation, and

denying said motion as to the defendant Huron Holding Corporation. It was ordered that the action be, and the same hereby is dismissed as to the defendant Fred Turner. The defendant Alexander Lewis being deceased and no service having been made on said defendant, the Court announced that the trial would continue as between the plaintiff and the defendant Huron Holding Corporation. Exceptions were asked and allowed.

The cause was argued before the jury by counsel for the respective parties, after which the Court instructed the jury, and placed them in charge of a bailiff duly sworn, and they retired to consider of their verdict.

On the same day the jury returned into court, the counsel for the respective parties being present, the jury presented their written verdict, which was in the words following:

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(Title of Court and Cause.)

“We, the jury in the above entitled case, find for the plaintiff and assess its damages against the defendant Huron Holding Corporation, in the sum of \$6730.70.

Carl Beeson, Foreman.”

The verdict was recorded in the presence of the jury and then read to them, and they each confirmed the same.

The defendant, **Huron Holding Corporation**, asked and was granted sixty days in which to prepare serve and lodge proposed bill of exceptions.

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(Title of Court and Cause)

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### JUDGMENT

Filed March 3, 1938

This action came on regularly for trial, said parties appearing by their attorneys. A jury of twelve persons was regularly empaneled and sworn to try said action and witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing evidence, the argument of counsel and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into court, and being called, answered to their names and presented their written verdict, as follows:

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(Title of Court and Cause.)

“We, the jury in the above entitled case, find for the plaintiff and assess its damages against the defendant **Huron Holding Corporation**, in the sum of \$6730.70.

Carl Beeson, Foreman.”

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged that the plaintiff have and recover from said defendant, the **Huron Holding Corporation**, the sum of **Sixty-seven Hundred Thirty and 70/100 Dollars** (\$6730.70), with interest thereon from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of **\$79.42**.

WITNESS The **Honorable Charles C. Cavanah**, Judge of said Court, and the seal thereof this 3rd day of **March, 1938**.

(SEAL)

**W. D. McREYNOLDS**, Clerk

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(Title of Court and Cause)

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**BILL OF EXCEPTIONS.**

Filed August 9, 1938

**BE IT REMEMBERED** that the above entitled cause came on to be heard before the **Honorable Charles C. Cavanah**, District Judge, sitting with a jury at **Boise, Idaho**, commencing **February 28, 1938**, upon issues drawn by plaintiff's amended complaint and the answers of the **Manufacturers Trust Company**, a corporation, and **Huron Holding Corporation**, a corporation, thereto; **William H. Langroise** and **Erle H.**

Casterlin appearing as attorneys for the plaintiff, and Hawley & Worthwine by Jess Hawley appearing as attorneys for the defendants. Whereupon, after the plaintiff's opening statement, the parties agreed and stipulated in open court that each of the defendants, Manufacturers Trust Company and Huron Holding Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York; neither corporation has ever complied with the laws of the State of Idaho relating to, or required thereby, for the doing of business in Idaho by foreign corporations; neither is legally entitled to do business in Idaho, and neither has or has had any designated person actually residing in Gem County, Idaho, or elsewhere in Idaho, upon whom process can be served as provided by the laws of Idaho; that on April 25th, 1933, Jess Hawley put Gordon Smith in charge of said mine for the owner or owners thereof and under the latter's direction one W. A. Harvey made between April 27th and May 8th, 1933, an inventory of personal property then on, at, in or used in connection with such mine and included property owned by plaintiff and defendant, which inventory is plaintiff's Exhibit 1, except that penciled writing and check marks are not a part thereof, and may be introduced in evidence without further identification, and without objection.

Whereupon, Exhibit No. 1 was introduced in evidence by the plaintiff.



“MR. HAWLEY: We have no objection if it be understood that the Harvey inventory includes not only the property of the Lincoln Mines Operating Company but property owned by the other defendant, as well. Roughly speaking, we sometimes call it the ‘Lincoln Mines Property,’ but that includes all the property on this property, and with the understanding that it is not admitted that this inventoried property belongs to the Lincoln Mines Operating Company. I think that was understood in the stipulation. We have no objection.

“MR. LANGROISE: That is as the stipulation shows, and is a fact.

“THE COURT: Admitted.”

“MR. HAWLEY: We will admit a large amount of work by the Lincoln Mines while it held the lease. We will admit that a second and entirely different lease, which was given to Mr. Phillips, was assigned to Ojus. We will admit considerable work done by Ojus. I understand all this type of testimony goes entirely to the question of whether either the Manufacturers Trust Company was doing business in this state, or whether the Huron Holding Corporation was doing business in this state. The Huron Holding Corporation was not brought into this case until September, 1937, when it was brought in by amendment. We will admit that there was a refusal to turn

over any of the personal property which belonged to the Lincoln Mines Operating Company at any time on June 4th, 1936, and that continued until the 15th of October, 1937, at which time denial of the right of the Lincoln Mines Operating Company was withdrawn to any property that the Lincoln Mines Operating Company, plaintiff in this suit, had on June 4th, 1936, which was situated on the Lincoln group of claims. We will admit that any technical claims we may have made to that property in pleadings on account of abandonment, of the statute of limitations will be withdrawn. I think that the case can be shortened very much in that way.

“MR. CASTERLIN: May it be admitted that in the West view Mining District, Gem County, Idaho, is a group of mining claims commonly known as the Lincoln Mines, which is the mining property so far as real estate is concerned which will be mentioned in this trial?”

“MR. HAWLEY: That is admitted.”

“MR. CASTERLIN: May it be admitted and, do you agree, that on July 30th, 1923, the Columbia Bank, a New York corporation, which was thereafter merged into the defendant Manufacturers Trust Company, made a loan of \$125,000 to the Industrial Bond & Finance Corporation, a corporation, which loan was evidenced by a note for that amount, executed by such latter

corporation.

“MR. HAWLEY: That is true.”

“MR. HAWLEY: We will admit that the Industrial Loan & Finance Company borrowed \$100,000 for the purpose of paying it to the Pacific National Bank for a deed which J. H. Richards and others had given an option to buy, that the \$100,000 was sent by the Columbian Bank to the Pacific Bank at Boise, Idaho, and the deed which was in escrow and was on payment on the \$100,000 to be delivered. The deed was sent to the Columbian Bank. It was a deed in blank, with the right when payment of the money was made to fill in the grantee, and that when the deed was received in New York the bank notified the company; that the company refused to take it,—

“MR. CASTERLIN: —You mean who, by the ‘company’?

“MR. HAWLEY: The Industrial Bond & Finance Company refused to take the deed, and claimed that its Board of Directors had not authorized its officers to buy the Lincoln group, and had not authorized them to give the \$100,000, and the \$21,000 notes, respectively, to the bank, and thereupon no action was brought by the Columbia Bank against the Industrial Loan & Finance Company, and the bank then fell heir to the property. It had the deed.

“MR. CASTERLIN: Which bank?

MR. HAWLEY: The Columbia Bank, and shortly after this happened the Columbia Bank merged with the Manufacturer's Trust Company, and as a part of the assets which were included in the merger, were the notes of the Industrial Bond & Finance Company, and the deed to the Lincoln group of mines, and the Manufacturers Trust Company, having this deed, with the name of the grantee blank, then filled in the name of one of their employees, Alexander Lewis, and recorded the deed so that the legal title to the Lincoln Group of mines was in Alexander Lewis, but he had no beneficial interest whatever, and was not interested financially at all, and was holding title purely and solely for the Manufacturers Trust Company, which was the beneficial owner and there has never since then been any deed issued by Alexander Lewis to the property, and that he died in December, 1937.

“MR. CASTERLIN: The statement you have made we agree to.”

It is agreed that Alexander Lewis made and executed a deed in which the name of the grantee was left blank in February, 1927, admitted in evidence as Exhibit 2, and delivered it to the Manufacturers Trust Company, and it was in that company's possession until February, 1933, and from that time on in the possession of the defendant, **Huron Holding Corporation**. On December 6, 1924, the notes for \$100,000.00

and \$21,000.00 were repudiated by the Industrial Bond and Finance Company. They were disputed paper and were not assets which a bank was allowed to carry and were taken out of the bank's assets. This would show on the profit and loss account. The notes were held for whatever value they had. At the time that Alexander Lewis' name was inserted in the deed he was in the employ of attorneys for the Manufacturers Trust Company and until 1935 was such an employee but not an officer. In 1935 he quit the employ of said Manufacturers Trust Company and entered into other employment where he remained until his death in 1937. He signed papers including the Dorman option, later assigned to the Lincoln Mines Operating Company, and an option to Mr. Phillips, later assigned to Ojus Mining Company, and he signed all papers which the Manufacturers Trust Company requested him to do, and he made no other conveyance except the deed above referred to in blank, being Exhibit No. 2.

Prior to 1932 the Industrial Bond & Finance Company was dissolved by the State of New York for non-payment of franchise taxes. On February 9, 1932, there was a merger of the Chatham and Phenix Bank with the defendant, Manufacturers Trust Company, and on that date the defendant, Huron Holding Corporation, was incorporated to take over from the merging banks various of their assets in amount approximately 20 million dollars, which assets were written off or doubtful and were not permitted under the

banking laws to remain in the bank as assets. The Huron Holding Corporation took title to these securities and gave therefor to the merging bank and the Manufacturers Trust Company four million dollars in debentures bearing six per cent, which are a first lien on the 20 millions of assets. The common stock of the Huron Holding Corporation was issued directly to the shareholders of the merging banks, share for share. Each shareholder in either bank got a share of common stock of the Huron Holding Corporation in proportion to their holdings. The officers and directors of the Huron Holding Corporation were all officers or directors of the Manufacturers Trust Company, excepting the President of the Huron Holding Corporation, who was neither an officer nor a director of the Manufacturers Trust Company. The only instrument of direct conveyance of the assets of the merged banks, the Chatham-Phenix and the Manufacturers Trust Company is Exhibit No. 3. From February, 1923, to February, 1932, the defendant, Manufacturers Trust Company, was the legal owner of the Lincoln Mines, and since February 9, 1932, the Huron Holding Corporation has been the holder, and since February 9, 1932, the Huron Holding Corporation has claimed beneficial ownership of the Lincoln Mines by reason of the said assignment and the acquiescence of the Manufacturers Trust Company. The only instrument of direct conveyance of any interest in the Lincoln Group of mines to the Huron Holding Corporation is the assignment.

The Huron Holding Corporation was organized and its business was the liquidation of the assets taken over, including the two notes referred to, the assets described in Exhibit No. 3, of which only the two notes of the Industrial Finance and Bond Corporation and the Lincoln group of mines are in Idaho. There is an agreement in writing between the Manufacturers Trust Company and the Huron Holding Corporation, under which the former is the managing agent of the latter and utilizes its facilities in such managing, charging the costs and expenses thereof to the Huron Holding Corporation. On March 25, 1926, the Manufacturers Trust Company negotiated and in the name of Alexander Lewis executed a lease of the Lincoln Mine to Henry Dorman which is Exhibit No. 5 admitted in evidence, and afterwards that lease was assigned to the Lincoln Mines Operating Company which undertook to carry on its terms until October, 1929, at which time they defaulted in performance, and following the default gave a quitclaim deed to Alexander Lewis for the Manufacturers Trust Company of the Lincoln Group of Mines and the property at that time belonging to the Manufacturers Trust Company and standing in the name of Alexander Lewis for and on behalf of the Manufacturers Trust Company. The plaintiff expended under the Dorman lease during the time it was operating under that lease \$195,000 and produced ore of the value of less than \$25,000, and in the course of the operations the plaintiff added to the mill and flotation system which was owned by Mr. Lewis, sunk

shaft, drove tunnels and drifts, did exploration work, and operated the mill on ore from the mine. There was machinery on the mine belonging to Alexander Lewis and the Manufacturers Trust Company. During the operation under the Dorman lease, the plaintiff employed an average of 25 men at the mine and mill. When operations of the plaintiff ceased under the Dorman lease, the plaintiff left certain personal property on the Lincoln Group of Mines. The plaintiff left the personal property on the Lincoln Group of Mines and made no claim to it for many years. At this point Exhibit No. 7 was admitted in evidence. This is a lease dated November 21, 1931, between Alexander Lewis, lessor, and William I. Phillips, lessee, by which the former leases and options for the sum of \$200,000.00 to the latter the Lincoln group of mining claims.

At this point Exhibit No. 8 was admitted in evidence, which is a lease dated June 15, 1932, from William I. Phillips to Mr. J. Lawrence Gilson, Vice President of the Manufacturers Trust Company transmitting an inventory of equipment covered by the contract with Alexander Lewis, which inventory is as of June 13, 1932. This inventory described the property owned by Mr. Lewis.

In 1931 Alexander Lewis got, in his own name but for the use and benefit and at the sole expense and direction of the Manufacturers Trust Company, U. S. patent for lode mining claims which became a part of the Lincoln group of mines and in this connection,



Mr. Lewis made discoveries, staked, surveyed and did other necessary work in connection with obtaining the said patents. The lease of 1931 made by Alexander Lewis for the Manufacturers Trust Company to William I. Phillips was assigned by him to the Ojus Mining Company which proceeded to do mining work on the Lincoln Group and extracted ore therefrom of the value of less than \$7,000, and during its operation used, whether with or without the consent of the Lincoln Mines Operating Company is not stipulated, certain personal property which the plaintiff had left on the Lincoln Group of Mines when it gave up its lease in 1929. The Ojus continued in possession of the group of mines under the Phillips option until April, 1933.

“MR. CASTERLIN: May it be agreed on April 25th, 1933, you, Mr. Hawley, acting for the owners of the Lincoln Mines, took possession of the Lincoln Mines with the consent of the Ojus Mining Company, as attorney for the owner of the Lincoln Mines took possession, —

“MR. HAWLEY: —Yes, you mean the Lincoln group of mines?

“MR. HAWLEY: This is a claim and delivery suit, and they are entitled to recover the property which belongs to the plaintiff, together with such damages as the court will instruct the jury on that point. We have admitted for the purpose of this case and record that there was a detention of whatever property the Lincoln Mines Operating Company owned in June

1936. There was a detention of that until October, 1937. At the time the Ojus gave up possession there was on the group of mines mining and milling equipment, assay office equipment, housing fixtures and furniture belonging to the Ojus Mining Company.

At this point, Exhibit No. 9 was admitted in evidence. This exhibit consists of a number of checks, all drawn by the American Smelting and Refining Company, in favor of Alexander Lewis, in care of the Manufacturers Trust Company and endorsed by Mr. Lewis to the order of the Manufacturers Trust Company. The first check is dated October 26, 1932, for \$343.26; the second is dated December 14, 1932, for \$400.70; the third is dated January 5, 1933, for \$738.13; the fourth was dated April 7, 1933, for \$327.47. The beneficial owners of the Lincoln Group and the Lincoln Mines Operating Company and the said ownership continues in the respective parties. Between May 1, 1933, and July 1, 1933, when Berthelson was in charge of the Lincoln Mines, he with a crew of some 10 to 20 men, about an average of 15, did work on the Lincoln Mine by way of cross cutting, drifting and doing general mining work for the owner or owners of the property. This work consisted of working in the tunnels, blasting, running out muck, attempting to discover ore, development work on the claims for the purpose of finding ore. In doing this work Berthelson and his men used some of the personal property left by the Lincoln Mines Operating Company. From July 1, 1933, to the present time

the owners of the Lincoln Mine have kept two men, one of them, Fred Turner, employed on the Lincoln Mine. On June 4, 1936, Mr. Phillips, President of the Lincoln Mines Operating Company, and his counsel, Mr. Langroise, went out to the Lincoln Mine and demanded from Mr. Turner who was employed by the Huron Holding Corporation, the personal property, without specifying it, which they said belonged to the plaintiff. Mr. Turner said he had no authority to turn over any property.

“MR. HAWLEY: I think that my previous statement which I made at the opening of Court, that they, and each of them, insofar as they may have made any claim to property on the Lincoln Mines from June 4th, 1936, —property of the Lincoln Mines Operating Company, personal property, from June 5th, 1936, and refused delivery of possession thereof; that they have withdrawn that claim, and on October 16th, 1937, agreed to deliver all property owned by the Lincoln Mines Operating Company to it.

“MR. CASTERLIN: That was in 1937.

“MR. HAWLEY: October 15th, 1937, the date when the defendant agreed to deliver or permit the plaintiff to take his property, whatever property it owned, off the Lincoln group.

“MR. CASTERLIN: At the time in 1937 when you offered to deliver possession of the per-

sonal property to the Lincoln Mines Operating Company, did you at that time specify any particular property which you would deliver to them?

“MR. HAWLEY: No; we just agreed to give them any property they owned, whatever of their property was there.

“MR. CASTERLIN: At that time was any offer of any items made?

MR. HAWLEY: No, just all the property that the Lincoln Mines Operating Company owned. Is there any question about that?

“MR. CASTERLIN: No, I think not.”

ELMER FOX, called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

My name is Elmer Fox. My business is certified public accountant. I have engaged in that business in Boise since July, 1927. I was employed by the plaintiff to audit its accounts and expenditures from the time of its organization up until July 31, 1927. I set up an accounting system for the Lincoln Mines and made periodical audits until December 10, 1929, the date of my last audit. On a number of occasions I audited the plaintiff's books. I had those books in my possession or access to them until the date of my last audit report. The books are now in my possession. The plaintiff spent in the purchase of machinery and equipment, erection of buildings, repair of build-

ing, development and operation of the Lincoln Mine something in excess of \$300,000. I have obtained from the Ojus Mining Company's files invoices of all equipment purchased by it while it operated with slight exception and they are all included in Exhibit No. 11, admitted in evidence, with the exception of two small items amounting to \$209.00 which I cannot locate.

I have examined Exhibit No. 1, Exhibit No. 8 and Exhibit No. 12 for identification. Exhibit No. 12 is a copy of the so-called Harvey inventory, plaintiff's exhibit No. 1, with a partial removal of the items shown to have been owned by Lewis as shown by plaintiff's exhibit No. 8. I am able to take plaintiff's exhibit No. 12 and remove from it any items that are owned by Lewis or purchased by the Ojus Mining Company.

"A. On page No. 4 of plaintiff's exhibit No. 12, marked for identification, it shows, 'One Ainsworth button balance,'—this indicates the list in various sections of this inventory, and this would come under section No. 6

"Q. You referred to one Ainsworth button balance?

"A. Yes, sir; that is on the Lewis inventory.

"Q. Now, will you indicate that in some manner on the exhibit?

"A. On this exhibit No. 12?

"Q. Yes, on the exhibit you hold.

"A. Yes; I have indicated it on this sheet.

"Q. Now, go ahead.

“A. Under section No. 7 there was ‘one belting, 54 $\frac{1}{2}$  inches long, repossessed by the Baxter Foundry,’ which is on the invoice of the Ojus Mining Company.

“Q. And will you indicate that?

“A. Yes; I have indicated that with a red ‘O’.

“Q. Eliminate that by drawing a line through that item, and leaving the letter ‘O’ as indicated.

“A” Yes; I have done that.

“Q” The letter ‘O’ will indicate the reason for doing so?

“A. Yes.

“Q. Now, go ahead.

“A. Under section 10 there is listed, ‘One Chicago Pneumatic Tool Company two-stage air compressor, No. 1721, size 19 by 12 inches, by fourteen inches,’ which is on the Lewis inventory.

“Q. And by the ‘Lewis Inventory,’ you mean plaintiff’s Exhibit No. 8?

“A. Yes, sir.

“Q. I will ask you now to indicate by a letter ‘L’ in front of that item, and then draw a red line through the item itself.

“A. I have done that.

“Q. Now, go ahead.

“A. Under section No. 18 of this exhibit, there is shown ‘Three ore cars,’ and ‘Two Ore cars,’ 15.5 cubic feet capacity, a total of five ore cars, which

are shown on the Lewis inventory, which lists only four mine cars.

“Q. Now, Mr. Fox, please bracket the two items of ore cars, and place to one side the letter ‘R’ and the figure ‘four’ to one side.

“A. I have marked it ‘Four Lewis.’

“Q. All right. Now, go ahead.

“A. Under Section 19, there is listed, ‘One W.L.E. Gurley surveyor’s transit,’ which was purchased by the Ojus Mining Company.

“Q. Indicate that by showing a letter ‘O’ to the left and drawing a line through the item itself.

“A. I have.

“Q. Now, go ahead.

“A. Under section 22, there is shown ‘one American Scale Company platform six hundred pound capacity. No. 9897,’ which was purchased by the Ojus Mining Company.

“Q. Please mark the letter ‘O’ off to one side and draw a line indicating that was purchased by the Ojus Mining Company.

“A. I have.

“Q. Now, continue.

“A. Under the same section, it lists, ‘One grind stone, angle iron frame, and double treadle, ‘which is on the Lewis inventory.

“Q. Please place the letter ‘L’ on the left side and draw a line through it.

“A. I have done that. Now under section No. 27 there is listed, ‘one Jim Crow rail bender, two

inch spread of hooks, Baxter Foundry attachment,' which was purchased by the Ojus Mining Company.

"Q. Have you placed the letter 'O' to the left and drawn a line through that?

"A. I have.

"Q. Now, the next item?

"A. Under section 28, the fourth item is 'one General Electric Company induction motor, No. 112048, 52 horse power,' which is on the Lewis inventory.

"Q. That description shows the number, does it?

"A. Yes; the number is 112048, 60 cycles, 440 volts.

"Q. Place the letter 'l' to the left side, and draw a line through it.

"A. I have. And under section No. 35, is listed 'one Cameron steam pump, No. 1204.' Under one inventory I had of the Lewis property back in 1929 it shows a Cameron steam pump, but there was considerable repairs to that pump by the Lincoln Mines Operating Company, and it does not appear on plaintiff's exhibit No. 8.

"Q. Will you change that and instead of 'steam pump,' make it 'one Cameron sinking pump.'

"A. Yes, sir.

"Q. Now, Mr. Fox, will you indicate to the left of that item the letter 'l'? Maybe we can save a little time here,—



“MR. LANGROISE: We will agree at the time of the taking of the inventory of the Lewis property of which exhibit No. 8 is a copy, that the Cameron sinking pump was off the property, but was subsequently returned to the Ojus Mine, and is listed in the Harvey inventory.

“MR. HAWLEY: And it should be marked the same as the others, and taken out.

“MR. LANGROISE: Yes.

“MR. HAWLEY: Sure. We will agree to that.

“Q. (By Mr. Langroise;) Now, would you remove the last sheet? Please remove that sheet.

“A. Yes.

“Q. Now, then, so far as exhibit No. 12 is concerned, for the purpose of identification, does it now contain any of the items as shown by the Harvey inventory of 1933, which appears upon the Lewis inventory, or which the Ojus Mining Company purchased?

“MR. HAWLEY: We will object to that last statement or question as calling for a conclusion of the witness.

“MR. LANGROISE: We will withdraw the question. At this time I offer in evidence the inventory which has been marked for identification as plaintiff's exhibit No. 11, or rather, those are invoices, and not an inventory.

“MR. HAWLEY: May I ask the witness a question?”

“THE COURT: You may do so.

“Q. (By Mr. Hawley:) You had nothing to do with buying the articles set forth in the various invoices included in exhibit No. 11?”

“A. No, sir.

“Q. (By Mr. Hawley:) And you had nothing to do and knew nothing about their accuracy?”

“A. I have verified the records of the Ojus Mining Company, and I know that the invoices are on the books of the Ojus Mining Company. That is all I did.

“Q. (By Mr. Hawley:) And you don't know whether this machinery was on the Lincoln Mines group, that is, you don't know about the actual stuff?”

“A. The actual physical condition; no, sir, but they were charged for on the Ojus books.

“THE COURT: He is testifying now as to what the books show.

“MR. HAWLEY: I object to these as they are not identified.

“THE COURT: That calls for the books.

“MR. LANGROISE: These are the original invoices from which the books were made.

“THE COURT: Yes; that is true. The objection will be over-ruled.

“MR. HAWLEY: Exception, please.

“Q. (By Mr. Langroise:) Now, Mr. Fox, have you taken the invoices of the Ojus Mining Company which consists of plaintiff’s exhibit No. 11,—have you eliminated from plaintiff’s exhibit No. 12, for the purpose of identification, all of the items of equipment shown by these invoices from that exhibit? I mean, have you eliminated them from exhibit No. 12?

“A. With one possible exception.

“Q. Will you indicate that possible exception?

“A. On plaintiff’s exhibit No. 11 there is a bill and it contains a charge for air receivers. The dimensions of the air receivers shown on that invoice do not correspond with the air receivers under Section 1 of exhibit No. 12 for identification, but there is one which is very close to the same size.

“Q. Now, the one that is very close to the same size, will you indicate it by placing a letter ‘O’ to the left of that item, and draw a line through it eliminating it so that there will be no question?

“A. I have done that.

“Q. Now, directing your attention to the heading on No. 14, and directing your attention to ‘one Denver jack-hammer No. 18090,’ will you draw a red pencil line through that?

“A. Yes.

“Q. Now proceed to the next under item No. 15, which lists a Gardner Denver Leyner drifter model, rented from the Missouri Mine. Will you draw a red lead pencil line through that?

“A. All right.

“Q. Now then, going to item numbered 16, which lists one Gardner Denver model No. 778 stopper, draw a red line through that.

“A. All right.

“Q. And the next item, ‘Denver Rock drill stopper,’ draw a red line through that.

“A. Yes, sir.

“Q. Now you have drawn a red line through each of those items?

“A. Yes.

“Q. Now, directing your attention to the item under No. 18,—no, that is number 17, which is the last item under No. 17, which is ‘10 foot conveyor chain, will you draw a red line through that?

“A. Yes, sir.

“Q. You have done so?

“A. Yes, sir.

“Q. Now turning to No. 33, directing your attention to the pulleys, the steel split pulleys, and calling your attention to the last item which is ‘one steel split pulley, fourteen inches diameter by six inch face, I will ask you to draw a red line through that.

“A. Yes.

“Q. Now then, directing your attention to the item under No. 37, being under the heading of ‘steel sharpening equipment,’ there is listed there as the last item ‘one Gardner Denver drill sharpener, model 3, complete with dies and dollies.’

“A. I have that item.

“Q. Will you draw a red line through that?

“A. All right.

“MR. LANGROISE: For the purpose of the record I will say the ones we are asking to have a line drawn through that the Lincoln Mines Operating Company will make no claim to these in the process of this litigation.”

“Q. (By Mr. Langroise:) Mr. Fox, again directing your attention to what has been marked as exhibit No. 12 I will ask you to turn to item No. 27, and calling your attention to the two items, which are listed as ‘one 50-foot machine air hose,’ and ‘one 40-foot machine air hose,’

A. Yes, I have them.

Q. Take a pencil and draw a line through those two items.

A. I have done so.

Q. Also directing your attention to items under the same number, heading No. 27, turning back to the other page, I will ask you to draw a line through the item marked ‘one 4-foot cross bar without cap for jack screw,’ and also ‘one arm and clamp for cross bar,’ and ‘one four foot

cross bar, complete.'

A. All right.

Q. Have you done that?

A. Yes, I have.

Q. And directing your attention to your report which has been referred to, have you another copy of that report that you gave Mr. Hawley a copy of yesterday?

A. Yes, sir.

Q. And will you get that?

A. Yes, sir.

Q. Mr. Fox, calling your attention to December 10th, 1929, I believe that you made an audit of the Lincoln Mines accounts or books?

A. I did.

Q. I wonder if you will tell the Court and jury the amount shown by the books of that corporation as having been spent by that corporation in the development, purchase of equipment, repairs to buildings, construction of new buildings and roads, etc., in connection with the Lincoln Mine.

MR. HAWLEY: We object to that as incompetent, irrelevant and immaterial.

THE COURT: You are not objecting on the ground it is not the best evidence?

MR. HAWLEY: That is not the objection.

THE COURT: Over-ruled.

MR. HAWLEY: Exception.

A. The total development cost up to that time, that is, the development of the mine property itself was \$230,919.55, from which at that time I deducted the amounts received from concentrates and crude ores shipped, and the profit on the boarding house operations in a total amount of \$19,235.71, leaving a net charge of development of \$211,683. 84.

Q. Now, Mr. Fox, will you give the amount of the equipment and machinery account?

MR. HAWLEY: I will object to that as incompetent, irrelevant and not material. I insist,—as far as the machinery and equipment is concerned, I insist on the best evidence, and also that it is not shown that is the machinery and equipment that was on the property on June 4th, 1936.

MR. LANGROISE: It is offered to show the extent of the operations, the amount of money spent under the terms of the liease they had. It is segregated, one to mining development, and to machinery and equipment, and the various accounts for the purpose of keeping books.

THE COURT: Not for the purpose of tracing the equipment?

MR. HAWLEY: We have made no question about the fact that while the Lincoln Mines Operating Company was there they spent a great

deal of money, and that is for the purpose of showing that a considerable amount of mining development work was being done, which is relevant only to show that the owner of the property was doing business in Idaho, and to go into details is not material and is not relevant. The fact that a lot of money was spent is all that seems necessary, without going into detail, which would be misleading, and it could serve no purpose. Would it make any difference to your Honor in determining whether they were doing business in the State of Idaho, if you knew what the total was, instead of having the details? This detail adds nothing to the statement. It states that the gross amount was an amount of some three hundred thousand dollars which was spent, and now to put in an itemized statement would require a considerable amount of testimony as to what machinery and equipment was put in, and so far as the testimony is concerned, as to assisting the Court in determining whether they were doing business in Idaho, I think that would be of no assistance.

**MR. LANGROISE:** I am not offering it for the purpose of showing the amount expended for machinery that the defendants have of the plaintiff's, but I am offering it to show the amount of money spent in the different phases, and that is material. I am not going into detail; I am not offering it as proof of ownership, as to value of



equipment which the defendants have that belongs to the plaintiff. I am merely seeking to segregate the various general heads, and show the amount expended by the Lincoln Mines Operating Company under the terms of the lease, which,—

**THE COURT:** I understand this evidence is directed solely to the question which will be presented to the Court, whether the lessor owning the property was doing business in this state by reason of the operations of the lessee, the money spent. I understand you confine it to that phase and are not attempting to trace the property.

**MR. LANGROISE:** We do not direct it to the proposition of tracing the property at all.

**THE COURT:** Over-ruled.

**MR. HAWLEY:** Exception, please.”

Thereupon the witness was excused in order to get the general ledger of the plaintiff company.

**WILLIAM I. PHILLIPS,** called as a witness for the plaintiff, and first being sworn, testified as follows:

I am William I. Phillips, the President of the plaintiff corporation, and as such executed defendant's exhibit No. 6 at the request of the Manufacturers Trust Company. I am familiar with plaintiff's exhibit No. 12 and it is an inventory of the personal property of the Lincoln Mines Operating Company. I am familiar with the property owned by the Lincoln Mines Operating Company.

THE COURT: Mr. Phillips, you have in your hand exhibit No. 12?

A. Yes, sir.

THE COURT: Is that the inventory of personal property of the Lincoln Mines Operating Company?

A. Yes, sir.

THE COURT: Do you know from your own knowledge that that property was purchased by the Lincoln Mines Operating Company and paid for by that company?

A. Yes, sir.

THE COURT: You know that of your own knowledge?

A. Yes, sir.

MR. HAWLEY: I object to this. It is not the best evidence.

THE COURT: Over-ruled.

MR. HAWLEY: Exception.

THE COURT: Did you say that you were present when this property was purchased?

A. I was not present, but I know it was bought and paid for by the Lincoln Mines Operating Company.

THE COURT: And delivered to it?

A. Yes; and used by it.

THE COURT: Were you out there at that time?

A. Yes; I lived out there for a time.

THE COURT: What were you doing out there?

A. I was out there when the mine was being operated, and lived out there from June, 1932, up until the following February, 1933, when I turned the property over to Mr. Hawley,—no, I didn't turn it over to him then, but I did the following April. I lived in the apartment, we building a building with offices on the ground floor, and an apartment.

THE COURT: What were you doing?

A. Operating the mine, working the mine.

MR. HAWLEY: And what company was he operating the mine for? I think it was the Ojus Mining Company.

THE COURT: He said the Lincoln Mines Operating Company bought it and paid for it and it was delivered to that company.

A. Yes, sir.

THE COURT: Now go ahead.

MR. HAWLEY: I move to strike the testimony of the witness as to the ownership and delivery of the property on the ground, first, that it is not the best evidence; second, that his testimony as to residence on the property does not show that he was operating for the Lincoln Mines Operating Company. The fact is he was operating for another company, the Ojus Mining Company.

It is not the best evidence, and the property is not identified. This is not the way to prove ownership of property.

**THE COURT:** This testimony relates to the personal property. The objection is over-ruled.

**MR. HAWLEY:** Exception.

**MR. LANGROISE:** We offer in evidence exhibit No. 12.

**MR. HAWLEY:** Objected to as not properly identified and not the best evidence. It does not show the ownership of this property.

**MR. LANGROISE:** This witness has testified that he knows that this is the property of the Lincoln Mines Operating Company. I am offering this without having him detail every item.

**THE COURT:** Over-ruled.

**MR. HAWLEY:** Exception.

**MR. LANGROISE:** We would now like to withdraw this witness and continue with the regular order of proof in connection with the property and other things as to doing business.”

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**PLAINTIFF'S EXHIBIT NO. 12**

**LINCOLN MINE, Pearl, Idaho.**

Inventory taken April 27th—May 8th, 1933.

By W. A. Harvey

	Page
Air receivers and Boilers .....	1

Automatic Starting Equipment .....	2
"                    "                    " .....	3
Assay Office Supplies .....	4
"          "          " .....	5
"          "          " .....	6
Belts, Lacing, Rivets etc. ....	7
Blowers and Fans .....	8
Bunk House .....	9
Compressors .....	10
Fire Extinguishers .....	11
Hammers .....	12
Hoists .....	13
Machines—Jack Hammers .....	14
"    Leyners and Drifters .....	15
"    Stoppers .....	16
Mill Machinery .....	17
Mine Cars and Trucks .....	18
"    Office Supplies .....	19
Miscellaneous Electric Equipment .....	20
Miscellaneous .....	21
"    Machinery etc. ....	22
"    Lumber Shed .....	23
"    Blacksmith Shop .....	24
"    Cook House supplies .....	25
"    Camp .....	26
"    Mine Supplies .....	27
Motors .....	28
" .....	29
Packing .....	30
Pipe Fittings .....	31

Pipe .....	32
Pulleys .....	33
" .....	34
Pumps .....	35
Saws .....	36
Steel Sharpening Equipment .....	37
Steel and Drills .....	38
Transformers .....	39
Ventilator Pipe .....	40

Lincoln Mines  
Pearl, Idaho.

**AIR RECEIVERS AND BOILERS: 1**

~~O 1 Air receiver 2' in diam by 6'. (Baxter Foundry attachment)-~~

1 Air receiver 2' 6" in diam by 8' with gauge.

1 Air receiver 2' by 5' with air gauge.

**AUTOMATIC STARTING EQUIPMENT: 2**

1 Union Manufacturing Co. Milwaukee, Wis. Magnetic switch 125 H. P. 440 volts, 60 cycles 3 phase serial #198228.

1 Union Manu. Co. Milwaukee, Wis. Starter for controller 125 H. P. 440 volts 60 cycles 3 phase serial #198227.

1 Three section rheostat, Union Electric Co. Milwaukee Wisc. 125 H. P. 440 volts. 3 phase, 60 cycles, type Z. Y. Serial # of section 198227.

1 Westinghouse Electric & Man. Co. A. C. rheostat. controller style 447914.

1 Cutter Hammer Man. Co. switch #10036H16.

- 1 Two section cutter hammer rheostat.
- 1 Three section West. Elect. & Man. Co. Rheostat.
- 1 Externally operated electric switch type A #72354. Trumbull Electric Man. Co.
- 1 Enclosed Electric switch type C. #40354.
- 1 Potential starter type R. 50. 100 H. P. 60 cycles 3 phase. Allis Chalmers Man. Co.
- 1 Push button starter switch.
- 1 Gen. Elect. Co. Schenectady, N. Y. rheostat type S.R.C. D.L. 69154.
- 1 Westinghouse safety switch, type W.K. 97.
- 1 Trumbull Electric Co. enclosed switch C. #40321.
- 1 Trumbull externally operated switch type A. #72351 C.
- 1 Trumbull Electric Co. enclosed electric switch type C, #40353.
- 1 Westinghouse Electric auto. starter style #90851.
- 1 A.G. Electric Co. switch # S 250.
- 1 Westinghouse Man. Co. auto. starter style #3015 A.
- 1 Westinghouse Electric 40-50 H.P. auto. starter not installed.

## AUTOMATIC STARTING EQUIPMENT

Cont'd.:

3

- 1 A.G. Electric Co. switch #243501 15 H. P.
- 1 General Elect. starting compensator #456075 125 H. P. for induction motor—with fuse block.
- 1 Cutter Hammer Mfg. Co. auto. Transformer, starter #9141H473. 75 H.P. Fuse block.

1 A. G. Electric Co. switch cat. #S250 2 pole, 125 volts, 30 amps on light circuit.

3 Jacknife switches.

3 Jacknife switches. Westinghouse Electric Co. auto starter, style #30150A.

1 Gen. Electric Co. starting compensator f H. P. Cat. #2019014 G.H. C.R. 1034KTY.

1 Westinghouse Electric & Man. Co. auto starter style #30151A.

1 Trumbull Electric Co. safety electric switch externally operated, cat. #72351C.

1 Cutter Hammer Man. Co. A. C. current auto. starting switch with thermal cutout.

3 General Electric Co. primary cutouts. type C. cat. #6 by 240, 7500 volts.

#### ASSAY OFFICE SUPPLIES:

4

3 Pouring moulds, 6 sections each.

1 Cupel tray 16 holds.

1 " " 25 " .

1 Cupel mould, 1 $\frac{1}{4}$  in. diam.

1 " " 1 $\frac{1}{2}$  " " .

1 Hammer.

1 Volumetric flask with glass stopper, 500 cc.

1 " " " " " , 1000 cc.

1 Flask vial mouth, flat bottom, 6000 cc.

1 DFC. burette support, #5815 for one burette.

7 Watch glasses, ground edges, 3" diam.

25 Porcelain crucibles.

3 Annealing cups.





- 2 #35 fire clay crucibles.
- 3 #14 graphite " .
- 3 #10 " " .
- 1 Amalgam retort complete.
- 1 160-300 oz. bullion mould.
- 1 20 oz. " " .
- 1 Large concial bullion mould.
- 2 Fire clay muffle doors.
- 2 Cast iron cooling stands.
- 119 20 gram. Utah fire clay crucibles.
- 3 25 " " " " " .
- 7 Watch glasses, 4" diam. ground edges.
- 60 lbs. Soda ash.
- 60 lbs. bone ash.
- 50 lbs. Litharge.

ASSAY OFFICE SUPPLIES Cont'd.: 6

- 10 lbs. Borex glass.
- 8 lbs. Fire clay.
- Lewis 1 Ainsworth button balance.
- ? 1 Thompson Analytical balance.
- 1 set sieves 12" diam. 60, 80, 150, 200 mesh.
- 1 Double needle valve gas burner 10" cyl. (Brown)
- 1 " " " " " 11" " "

BELTS LACING RIVETS ETC.: 7

- 1 Box hold tite metallic belt lacing, with bolts for heavy duty belt.
- 4 Cross Crescent belt rivets, large shanks #9.
- 3 " " " " " " #11.
- O ~~1 Belting 43 1/2' long (Repossessed by Baxter Fdry.)~~

- 1 Rubber belting 10' 8" long.
- 1 " " 22' 6" " .
- 1 " " 23' 6" " .
- 6 #189 Crescent belt plates.
- 1 Doz. #147 Crescent belt plates.
- 11 #87 " " " .
- 2 #108 " " " .

**BLOWERERS AND FANS: 8**

- 1 Direct blower, American Blower Co.

**BUNKHOUSE: 9**

- 1 Heating stove.
- 3 Double cots.
- 21 single cots.
- 3 Khaki Mattresses.
- 20 Plain mattresses.

**COMPRESSORS: 10**

- ~~1 Chicago Pneumatic tool Co. two stage air compressor #1721 size 19 by 12' by 12' C.B.~~
- 1 Doak Gas Engine Co. compressor #J.O. 131948.

**FIRE EXTINGUISHERS: 11**

- 1 Pyrene Fire extinguisher, #952773.
- 1 Phomene type fire extinguisher, Manufactured by Phrene Mfg. Co. Newark, New Jersey.
- 1 Pyrene fire extinguisher, #953777.

**HAMMERS: 12**

- 1 6 lb. sledge, with short handle.
- 1 8 lb. double jack.
- 1 7 lb. double jack.

2	4 lb. single jacks.	
1	Hammer (assay office).	
2	Mullers (assay office).	
<b>HOISTS:</b>		<b>13</b>
	Machines	14
<b>JACK HAMMERS:</b>		
1	Buda Fay Mfg. Co. heavy duty jackhammer.	
1	<del>Denver Rock Drill Co. jackhammer #18090</del>	
	<del>(rented from Missouri Mines.)</del>	
	Machines	15
<b>LEYNERS &amp; DRIFTERS:</b>		
1	<del>Gardner Denver Leyner, Drifter model 107</del>	
	<del>(Rented from Missouri Mines.)</del>	
	Machines	16
<b>STOPERS:</b>		
1	<del>Gardner Denver model 77N stoper.</del> (Rented from Missouri Mines.)	
1	<del>Denver Rock Drill stoper</del> (Rented from Missouri Mines.)	
<b>MILL MACHINERY:</b>		<b>17</b>
1	Marcy ball mill.	
2	Mackintosh pneumatic flotation machine.	
1	Continuous Portland sluice filter, order #271.4/17.	
1	Model C. Dorr classifier, 4 ft. 6" by 17 ft. 2 compartments.	
1	Clean up pen 3 ft. in diam.	
3	Sheave wheels 4 ft. diam.	
1	" " 6 ft. " .	

1 Grizzley.

1 Reagent feeder.

~~1 10 ft. conveyor chain for conc. conveyor or from  
Wilfley conc. tables. (Baxter Fdy. Attachment)~~

MINE CARS & TRUCKS: 18

is { 3 Ore Cars.

{ 2 Ore Cars. 15.5 cu. ft. capacity.

1 Timber truck.

1 Warehouse truck.

MINE OFFICE SUPPLIES: 19

O ~~1 W. & L. E. Curley surveyors transit. (Nohairs)~~

1 100 ft. steel tape on reel. Chicago Steel tape Co.

1 Protectograph check writer, serial #736619.

1 Underwood Standard typewriter, #5.

2 Filing cabinets.

1 Flat top desk.

1 Swivel office chair.

1 Arm office chair.

1 Heating stove.

1 Letter basket.

2 Home made tables.

MISCELLANEOUS ELECTRIC

EQUIPMENT: 20

1 Signal gong on side of Cordova shaft. Hoist room.

1 Signal gong over head in Cordova shaft. Hoist room.

2 Signal gongs, complete with one extra bell, in alley way.

- 1 Edwards electric gong #510.
- 2 Coils #8 rubber covered wire 1000 ft. in all.
- 1 Klein Lineman climbers.
- 1 Klein belt and safety strap.
- 1 Electric current meter #4258172.
- 1 Wall telephone, claimed by Cordova.
- 1 Electric range, dismantled and in poor condition.
- 1 Set coils for Allis Chalmers 75 H.P. motor.

## MISCELLANEOUS:

21

- 1 Denver Fire Clay seamless gas tank, 8 gal. capacity. For assay office.
- 2 Galvanized iron gas drums cap. 50 gals.
- 1 Clock.
- 1 Bin holding assortment of bolts & nuts.
- 1 Flue cleaner adjustable to 4".
- 1 " " " " 2".
- 1 Pressure relief valve, 2½".
- 3 Gardner air line oilers.
- 1 Carton valves for Deming trilex pump.
- 11 Side rods for air drills.
- 1 Ratchet operated Toledo pipe Machine, with dies for threading pipe from 2½" to 4".
- 3 Gauge glasses 3/8 by 12".
- 2 Compressor rings for Doak Compressor.

## MACHINERY, MISCELLANEOUS, ETC.: 22

~~O 1 American Scale Co., platform, 600# capacity #9897.~~

1 Blacksmith solid box vice, 6" jaw.

~~Lewis 1 Grindstone, angle iron frame and double treadle.~~

**LUMBER SHED MISCELLANEOUS: 23**

- 1 Counter shaft.
- 1 Drive shaft.
- 1 Wheelborrow.
- 1 Canthook.
- 1 Fair come-alongs.
- 1 Picaroon.

**BLACKSMITH SHOP, MISCELLANEOUS: 24**

- 10 Pairs blacksmith tongs.
- 5 cutting tools handled.
- 2 Bottom swedges, 1½”.
- 1 Top swedge, 1”.
- 1 Flatter.

**MISCELLANEOUS COOK HOUSE  
SUPPLIES: 25**

- 1 Frying pan.
- 4 Bread pans.
- 1 Drip pan
- 2 Tea pots.
- 2 Coffee pots.
- 13 Dinner pails.
- 12 Individual bread pans.
- 5 Salt shakers.
- 2 Milk shakers.
- 4 Sugar bowls.
- 12 Cups.
- 2 Platters.
- 4 Serving dishes.
- 15 Mush bowls.

- 1 Tennessee range, water jacket connected to range.
- 1 Kelvinator, freezing unit #3300.
- 1 Cutter Hammer Mfg. Co. Current starting switch.  
(Already included in inventory.)

3 Dining tables.

1 Kitchen work table.

1 Kitchen serving table.

1 " work table with flour bin.

1 Dish up table with shelves.

CAMP MISCELLANEOUS: 26

1 Wheel puller.

1 Locker box containing meters.

MINE SUPPLIES, MISCELLANEOUS: 27

1 Boring machine and timber auger.

1 Shell complete with screw feed.

1 6' column.

1 6' column with clamp.

~~1 4' cross bar, without cap for jackscrew.~~

~~1 Arm and clamp for cross bar.~~

~~1 4' cross bar complete.~~

1 2' jackscrew.

1 16" " .

~~○ 1 Jim Crow rail bender, 2' spread of hooks. (Baxter Foundry Attachment).~~

50# fish plates.

~~1 50' machine air hose, 3/4" (rented Missouri Mines).~~

~~1 40' machine air hose, 3/4" (rented Missouri Mines).~~

2 Lengths of water hose, 34' each.



- 1 33' of 3/4" air hose.
- 1 23' of 1/2" water hose.
- 1 12' of 1/2" water hose.
- 1 Gardner airline oiler.
- 1 Buda Foundry & Mfg. Co. railroad jack.

MOTORS:

28

1 Allis Chalmers Mfg. Co. continuous duty induction motor, 75 H.P. Fall load, 550 R.P.M. 440 volts, 60 cycles, 3 phase, serial #113229.

1 Allis Chalmers Mfg. Co. Induction motor, 100 H.P. 3 phase, 60 cycles, 115 amps. 440 volts, 1750 R.P.M. serial #223BS823, 4104.

1 U. S. Elect. Mfg. Co. induction motor, serial #17843 75 H.P. 440 volts, 1200 R.P.M. located at Los Angeles, Cal. (1-Pulley Baxter Foundry attachment)

~~1 General Electric Co. Induction motor #112048, 60 cycles 440 volts, 52 H.P.~~

1 Gen. Elect. Co. Induction motor #4586254.

1 Gen. Electric Co. Induction motor 5 H.P. #1343138.

1 Gen. Elect. Co. motor type K. T. 752, 15 H.P. #760.

1 West. Elect. induction motor type C.C.L. 15 H.P. torn to pieces.

1 West. Elect. induction motor type C.C.L. 15 H.P. serial #455104.

1 Gen. Elect. Co. induction motor, model A-67-294 7 H. O. serial #4860485.

1 West. Elect. & Man. Co. induction motor 30 H. P. type CCL, #579472.

1 Gen. Elect. Co. induction motor, 3 H.P. #244734.

1 Allis Chalmers motor, 125 H.P. #115956.

1 Fairbanks Morse single phase 1 H.P. motor #205628.

1 Gen. Elect. Co. 1½ H.P. motor serial #317612.

1 West. Elect. & Man. Co. centrifugal motor #25 H. P.

MOTORS Cont'd: 29

PACKING: 30

1 Pieces Rainbow rubber belt packing, 3" by 3".  
35 lbs. miscellaneous packing from 1" to 5/8".

12 lbs. square Columbia packing, 1" by 1".

10 ¾ lbs. " Belmont flax packing, 1¼" by 1¼".

10½ lbs. " " " " 1¼" by 1¼".

1½ lbs. " Dragon " " ½" by ½".

2 lbs. Skookum Graphite " " 5/8" single rings.

3 lbs. " " " " 5/8" in coils.

PIPE FITTINGS: 31

26 Pipe fittings in form of ells, bushings in sizes 4" to 3".

350 Pieces pipe fittings in form of ells, nipples, tees, couplings, unions, bushings, & valves. (4" to ½")

243 Miscellaneous pipe fittings from ¼" to 2".

44 " " " " 3" to 4".

PIPE: 32

7600 Feet of 3" pipe. (In ground from Marquite

shaft at Pearl to Lincoln Mine.)

100 Feet of 1/2" pipe.

**PULLEYS: (PRESSED PAPER) 33**

1 P. P. Pulley, 7 1/2" drum by 6 1/2" face, bushed to 1 1/2". (Bad)

1 P. P. Pulley, 4" drum by 4 1/2" face. Keyway for 1" shaft.

1 P. P. Pulley, 10" drum by 12" face.

**PULLEYS (WOOD SPLIT)**

1 W. S. Pulley, 6" drum by 6" face.

1 W. S. " 18" " " 6" " with bushing to 1 and 11/16.

1 W. S. Pulley, 4' 6" diam. by 8" face.

1 " " 4" " " 8" " .

1 " " 3' 6" " " 8" " .

1 W. S. " 28" " " 8" " .

1 " " 26" " " 8" " .

1 " " 26" " " 6" " .

1 " " 16" " " 10" " .

2 " " 14" " " 6" " . (1 bad order.)

1 " " 14" " " 6" " .

1 " " 5" " " 6" " .

**PULLEYS (STEEL SPLIT)**

1 S. S. Pulley, 10" diam by 10" face (incomplete & rusted).

1 S. S. Pulley, 10" diam by 7" face with bushing to 2".

1 S. S. Pulley, 10" diam by 7" face with bushing to 2 3/8.

1 S. S. Pulley, 6" diam by 4" face.

~~1 S. S. Pulley, 14" diam by 6" face. (Baxter Fdy. attach.)~~

### PULLEYS (PRESSED STEEL)

1 P. S. Pulley 36" diam. by 5" face.

1 " " 32" " " 7" " .

1 " " 26" " " 9" " .

1 " " 16" " " 7" " .

### PULLEYS MISCELLANEOUS

34

1 Solid cast iron pulley, complete with set screws for 2" shaft.

1 C. I. Pulley, 4 ft. diam. by 5" face.

1 Friction clutch pulley, 3' diam. by 12" face.

1 Solid cast steel pulley 20" diam, by 5" face.

### PUMPS:

35

1 Tamp pump.

4 Sand pumps. Union Iron Works, Spokane, Wash.

2 Centrifugal pumps, 1 1/2" #40805 by Swaby Mfg. Co.

1 Centrifugal pump, #2.

Lewis ~~1 Cameron Steam pump #1204, 3" suction 2 1/2" discharge.~~ sinking

1 Dorr Co. one body pump, suction.

### SAWS:

36

1 Ripsaw, 24" in diam.

1 Swing out off saw, 3 ft. in diam.

**STEEL SHARPENING EQUIPMENT: 37**

- 1 Anvil, weight about 200 lbs.
- 1 Sow, for hand sharpening of drill steel.
- 1 Gardner Denver Drill sharpener, model 3, complete with dies and dolloes. (Rented from Missouri Mines.)

**STEEL, AND DRILLS: 38**

- 8 Twist drills, 2 round shank.
- 8 Hand augers for drilling soft ground.
- 1 2' hand auger, coal miners pattern for soft ground.
- 2 4' hand auger, coal miners pattern for soft ground.

**TRANSFORMERS: 39**

- 1 West. Elect. Co. type S. Transformer, 15KVA, serial #264507.
- 2 West. Elect. & Man. Co. current transformers, type A. maximum line potential 2500 volts, style #125611A.

**VENTILATOR PIPE: 40**

160 ft. galvanized pipe, 10".

It was then stipulated that the Manufacturers Trust Company has or had an agreement or arrangement with the Huron Holding Corporation by which the facilities of the Trust Company were used by the Huron Holding Corporation in the liquidation of the accounts assigned to the latter.

At this point plaintiff's Exhibit No. 14 was admitted in evidence and is as follows:

January 13, 1932.

Mr. William I. Phillips,  
28 North Biscayne Boulevard,  
Miami, Florida.

Dear Mr. Phillips:

Your letter of January 8th, 1932, was referred to me by Mr. Posner of Jones & Neuberger. I was indeed sorry to learn that the hoist was not returned sooner than December 28th, 1931, or there-about, and that this affair delayed your starting operations at the mine. In view of the circumstances outlined I hereby grant you an extension of sixty days from January 21st, 1932, such date being the limit of time allowed under our agreement dated November 21st, 1931, for commencing work at the Lincoln Mine. I would like to take this opportunity to notify you that all further communications and matters pertaining to the Lincoln Mine lease should be addressed to the Manufacturers Trust Company, 55 Broad Street, New York City, attention Mr. J. Lawrence Gilson, vice-president. Any arrangements or notifications to be made by Mr. Gilson shall be deemed as having been made by me.

Yours very truly,

Alexander Lewis.

ELMER W. FOX was recalled as a witness on behalf of the plaintiff, and having been previously sworn, testified as follows:

I have with me in court all of the books of the plaintiff corporation from which my audit was made in December, 1929. The books correctly reflect the invoices. I cannot find all of the invoices or all of the books, but they were all examined prior to my report in 1929. The books show in machinery and equipment account \$70,095.87. The development account shows \$11,677.86.

MR. HAWLEY: Your Honor will remember that I agreed, to save a lot of time, that the Lincoln Mines Operating Company did do a lot of work, did build roads, and did put in machinery. Now, why detail this after that general agreement, I cannot understand.

THE COURT: If your agreement covers this of course it would be a duplication again.

MR. CASTERLIN: He refused to agree as to the amount expended, and how it was spent, for what purpose.

MR. HAWLEY: I stated at that time that I could not state, and didn't know the exact amount. I had seen one list, and it was a considerable list. They wanted to agree it was some three hundred thousand dollars that had been spent by the Lincoln Mines Operating Company, and Mr. Fox testified now that that amount was something over three hundred thousand, and why go into these items and take a lot of time on that,

unless your Honor feels that it is necessary in deciding this question.

**THE COURT:** Counsel under his theory wants to show the specific amount referred to in the least, but in a general way, if you have agreed to that, why go over it again, but now it seems you can't agree that you have agreed, and now you are coming down to the question of whether the agreement covers certain items. We might save time if we go ahead.

**MR. HAWLEY:** I think that Mr. Fox having given the information as to his last audit, I have that information which I didn't have before, and I would not have any objection to saying that the books show an expenditure of some three hundred thousand dollars on roads, equipment, etc.

**MR. LANGROISE:** Then you are willing to agree that the Lincoln Mines Operating Company expended during the time of their lease with Alexander Lewis acting for the Manufacturers Trust Company on the Lincoln Mines group of claims in the Westview Mining District, Gem County, in the erection of buildings, the repair of buildings, the construction of telephone lines and the repair of power lines, building of roads, and development of mining property itself, in the purchase of mill machinery and equipment, the sum of \$309,000?



MR. HAWLEY: That is what your books will show, and I will agree to that.

### CROSS EXAMINATION

This was a closing and final audit of the Lincoln Mines Operating Company. The books show no operation after December 10, 1929.

GEORGE SHAFFER, called as a witness for the plaintiff, was duly sworn and testified as follows:

My name is George Shaffer. I have lived at Emmett, Idaho, for about 25 years. I worked at the Lincoln Mine near Pearl, Idaho, for the Ojus Mining Company for about two and one-half months during 1932. Mr. William I. Phillips was in charge at that time and I worked for Mr. Berthelson who was operating the Lincoln Mines about two months after the first of May, 1933. I operated part of the equipment on the Lincoln group of mines at the time the Ojus Mining Company was operating. Mr. Berthelson used the lines, transformers and part of the motors that had been used by the Ojus Mining Company; also air compressors and crusher in the mill—ore cars and other equipment—I do not know what was used underground as I was on top. Berthelson put in a pump and motor in the old Lincoln shaft which was in addition to that used while I worked for the Ojus Company. He also put in a couple of high lines to the old Lincoln shaft. The machinery was running when I was working for the Ojus Mining Company. The

electrical equipment was in fair condition and the mill was in operation, also the motors, the compressor, the hoist, the pumps. When I returned to work for Mr. Berthelson the electrical equipment was in fair running condition.

### CROSS EXAMINATION

I was an electrician, as helper, just as an electrician there. I was looking after the motors, inspecting them and did some changing there. When I worked for Berthelson I oiled the motor that pulled the hoist. That motor ran fair and did its work. There was also a motor that ran the compressor. My work was looking after the motor, starter and things. I had to put in a contact on the starter—like putting in a spark plug—and keep starters in shape. I worked on the motor on the ore crusher to oil it and fix contacts. That motor ran out a little stuff and then it was shut down. I also worked with the small motor on the fan to throw air down in the mine. I worked on the motors at both the Lincoln and Ojus shafts. The motor at the Ojus shaft was large. I looked after five motors—put fuses in the transformers of which there were six. While I was there the property I worked on worked, and I examined it and kept it running. It wasn't necessary to go into the machinery when it was working. I didn't have to go into the motors or transformers. At spare time I worked as hoiseman. I also changed the transformers from high

to low voltage. The mill was not worked, only the rock crusher.

### REDIRECT EXAMINATION

The mill was running when I worked for the Ojus, but not when I worked for Berthelson.

“THE COURT: Now, as to the offer of Exhibit No. 3, the objection to it will be over-ruled.

MR. HAWLEY: Exception.

THE COURT: I understand these are offered as to the question whether they were doing business, as well as the transfer.

### RECROSS EXAMINATION

When Berthelson was operating I worked on both the Ojus and the Lincoln shaft hoists. The Ojus hoist was used every day, and the Lincoln hoist, I don't know how often it was used. I also used shovels, picks, and stuff underground.

FRED TURNER, called as plaintiff's witness, being sworn, testified as follows:

I am Fred Turner. I live at the Lincoln Mine where I have been since October, 1933. I was hired by Mr. Erickson and have been at the mine ever since. Bill Young and Erickson have been there with me. We have sunk a shaft about 125 feet deep, run one drift about 150 feet, two about 75 feet and one about 50 feet. We ran a tunnel in the neighborhood of 400

feet. We received our pay from Huron Holding Corporation in every instance. Checks were always signed by Mr. Bacell. In connection with my work I corresponded with Mr. Fozard, reporting to him about every two weeks the amount of work done. I did the work partly on my own and partly on instructions from Mr. Fozard.

It was thereupon stipulated that Mr. Fozard has been Vice-President of the Manufacturers Trust Company since May, 1925, and director of the Huron Holding Corporation since 1934. Prior to that time I was an employee of the Manufacturers Trust Company.

WILLIAM I. PHILLIPS, recalled as a witness for the plaintiff, having been previously sworn, testified as follows:

The Lincoln mill was operated prior to April 25, 1933, and was in excellent condition. I was in and about the mill a good deal when it was running in 1932 and had occasion to observe it and notice its operation. The mill was in excellent condition. Our recovery was as high as 94.7 per cent. I kept in touch with the superintendent to know what the mill was doing. The mill was closed in April, 1933.

“MR. CASTERLIN: I think we can agree that on April 25th, 1933, all of the personal property of the Lincoln Mines Operating Company then on the Lincoln group of mining claims

which have been mentioned in this action came lawfully into the possession of the owners of the Lincoln group, and that possession of the owners remained lawful respecting said personal property until June 4th, 1936; that the personal property of the Lincoln Mines Operating Company was so left on the claims by the owners thereof, or the Lincoln Mines Operating Company which had not abandoned the same; that the property described in the Harvey inventory, so-called, is the property which was left on the mining claims; and that the property described in the Harvey inventory was owned by the Lincoln Mines Operating Company, the Ojus Mining Company, or the owners of the mining claims; that W. I. Phillips was at all times and now is president of the Lincoln Mines Operating Company.

MR. HAWLEY: That is agreeable.

I was on the Lincoln Mine during the last operation for the Ojus Mining Company. The property was generally in good working condition and was in the same condition as it was when it was turned over on April 25, 1933. The machinery used in the operation of the mill was in place when it was turned over on April 25, 1933. The mill equipment and the machinery and the mill was ready to run on April 25, 1933. No outside equipment was used during the month of April, 1933.

## CROSS EXAMINATION

“BY MR. HAWLEY:

Q. I believe that the property, whatever it was, that was owned by the Lincoln Mines Operating Company on April 25th, 1933, was covered by a chattel mortgage that had been given to you in the sum of \$45,000 by the Lincoln Mines Operating Company, and by you assigned to Mrs. Pierson?

MR. LANGROISE: That is objected to as incompetent, irrelevant and immaterial, whether or not the property was subject to a chattel mortgage is not an issue in this case, and has nothing to do with the determination of the possession.

THE COURT: When is it claimed that this mortgage was given?

MR. HAWLEY: The first of September, 1927, made by the Lincoln Mines Company to Mr. Phillips himself, and by him assigned on the sixth of August, 1929, to Helen S. Pierson.

THE COURT: It is a question of whether it is admissible and has any bearing on the value of the property in 1933, at the time you claim possession was taken. It may be that by reason of this mortgage being of record one could not move this property without consent, but the issue here seems to be the possession. It may be admissible in rebuttal of a value, if any was placed on this

property. I doubt if it is admissible at this time. I cannot see where it is, but I can see where it might be admissible in rebuttal, or if this witness testified as to the value of this property it might have a bearing then. After you offer in evidence, if you do offer in evidence, as to its value, whether they would have a right to show the chattel mortgage, that would be a question, but I think at this time it would not be admissible. You will understand that I am not holding that it is not admissible at any time.

**MR. HAWLEY:** I think I understand your Honor's ruling and I think it is absolutely correct on this question until he testifies as to the value of the property.

In April, 1933, part of the roof was off the hoist house, leaving the motor and hoist exposed partially to the weather.

**J. E. PARSONS**, called as a witness for the plaintiff, was sworn and testified as follows:

My name is J. E. Parsons. I live in Boise, Idaho. I am employed by the Sawtooth Company in that city which is engaged in mining machinery sales, tractors and equipment, and general machinery service. I have been with that company for about three years. I have had experience with mill machinery and mill equipment since 1918. I was foreman of a concentration mill in Colorado in 1919 with full supervision; in 1920 I was

superintendent of construction of an eight hundred ton concentrate plant at Telluride, Colorado, where I stayed for two and one-half years; built a two hundred thousand dollar wash plant for the segregation of old stope ores in Colorado; supervised building of a high school in southern Colorado after leaving Telluride in 1923; supervised building of Adams State Normal at Alamosa, Colorado, for nine months; revamped the Royal Tiger Mines plant at Breckenridge, Colorado. I have had charge of machinery department for mines and have handled equipment for the Sawtooth Company since my employment there. I recommend equipment for purchasers, advising them what mills to put in; also buy used equipment and rent it to the customers. I feel I was familiar with value of the use of mining equipment on June 4, 1936. I have partly examined Exhibit No. 12 and am familiar with the machinery described in that exhibit. I saw the larger equipment:

Examination by Mr. Hawley:

I was away from the supervision of mills for two years, due to my wife's health. During 1925 and 1924 I supervised the building of school houses. I then went to the Royal Tiger Company, revamped the mills and continued to supervise construction of a concentrator mill and flotation mills for copper in Arizona. I then went to Colorado and superintended the construction of a concentrating mill for lead, silver and gold. I have not built any mills in Idaho. In 1929, I had supervision of the Utah Ore Smelting



Company in Salt Lake City, which is considered ore milling. I then had charge of installing the Transcontinental Compressor Station on the Amarillo to Chicago Gas line in Oklahoma. That was not a mining job. It lasted for four months. Then I went to Kansas to superintend the construction of a compressor plant on the same gas line. I came back to Salt Lake City and went back to mining work in 1931, mining and mining equipment, supervising the equipment for placer mining operations near Soda Springs, Idaho. I then went to Hailey, Idaho, and constructed a mill for my own service on the Croesus Gold Mining property. I was there two years until 1934. I was then engaged with the Sawtooth Company. A part of the time I did designing work for the construction and in many cases I recommended purchases. Prior to 1933, I was not engaged in buying or selling mining equipment and had no experience in that line until 1933 when I began to work for the Sawtooth Company as construction engineer in charge of mining equipment, and also sales engineer. I have been engaged in that since 1933.

It was early in 1937, I believe that I was called upon to appraise the property at the Lincoln mines.

Omitting those items in Exhibit No. 12 through which lines have been drawn, I appraised the mining and milling equipment excepting steel tape. I did not appraise the bunk house equipment, mine office equipment, lumber shed miscellaneous, all miscellane-

ous cook house supplies or transformers. Prior to making the appraisalment I examined the property, but was not able to see it all. I saw the larger equipment. I inspected the Lincoln Mine and the property thereon Friday last week at Mr. Langroise's request. I went there about 3:30 in the afternoon and left at 5 or 7 o'clock, spending about 2½ or 3 hours in investigation.

I am acquainted with and have dealt in air receivers, automatic starting equipment of the types listed in Exhibit No. 12, and I have bought and sold equipment of the same type or similar in type to that listed in Exhibit No. 12. My company buys and sells in competition with other companies in Boise. The Udell Manufacturing Company and the Olson Manufacturing Company and the Baxter Machinery and Foundry Company are engaged in buying and selling the same type of machinery which I buy and sell. I have dealt in new and second hand assay supplies, belts, lacing, rivets, beltings, blowers, fans and compressors, both new and second hand milling machinery. I have bought a March Ball Mill from the Atlanta Mining Company. I have handled and sold some miscellaneous electrical equipment. I am acquainted with all the items and the blacksmith shop equipment, both used and new, and miscellaneous mining supplies and electric motors. I have bought and sold motors similar in type and also packing, pipe pipe fittings, pipe, wood and steel and cast iron pulleys. I bought mine equipment for the North Hornet Mining Company at Council, Idaho

abd the complete equipment at the Hailey Bonanza at Hailey, Idaho, and then I have been purchasing parts. The North Hornet mill is a flotation type Ball Mill, and the Hailey Bonanza was a seventy-five ton plant, gravity concentration. I have bought machinery similar to the Lincoln Mines property at the St. Joseph mine and I come in competition with the Boise Junk Company and other salvaging companies. I also buy motors. There is a market here for electrical motors and equipment and also for this type of mining machinery.

To the best of my knowledge, I would say the total of all the items I valued is \$16,949.68. That does not include transformers and other group of items which I have referred to. I am familiar with the rental price of equipment of this kind to the extent of what I have rented in the vicinity of Boise and Pearl during the period from June 4, 1936, to October 14, 1937, and know in checking what other parties have rented. I have engaged in renting equipment and in some cases am familiar with rentals of other concerns.

Q. Is there a rental or market for the rental of equipment of this kind, and was there from June 4th, 1936, to October 15th, 1937?

A. There would have been on parts of it, that is, on parts of the equipment.

THE COURT: Why do you say to October the 15th, 1937?

MR. LANGROISE: That is the undisputed date.

THE COURT: The undisputed date of what?

MR. LANGROISE: After the possession was denied they refused the possession and it was on October the 15th, 1937, that the Lincoln Mines Operating Company were told that they could come and get the property. That is the date mentioned.

THE COURT: All right. That is what my inquiry was.

Q. What was the price, or the common rental for equipment similar to the electric motors that are contained in and described in plaintiff's exhibit No. 12 during that period.

MR. HAWLEY: That is not an issue here, and is not relevant or material or competent.

THE COURT: You mean in the market here?

MR. LANGROISE: I want to amend that.

Q. The rental market price in this vicinity here for that equipment.

THE COURT: You mean in Pearl, Idaho?

MR. LANGROISE: I will withdraw that question.

Q. Where the property is, and the Boise market.

There is no one engaged in the business of renting

equipment at Pearl, Idaho, which is about 24 miles from Boise. And it was so stipulated.

Q. Directing your attention to June 4th, 1936, to October the 15th, 1937, that is, between those dates I will ask you if you are acquainted with the rental market value of the equipment such as electric motors during that period?

A. Yes.

Q. What was it?

A. On the average of that equipment—rent for the standard, you mean?

A. Yes.

A. Ten per cent per month of the depreciated value of the equipment, meaning the value of the equipment when it goes out.

Q. Directing your attention, Mr. Parsons, to the equipment of the type and kind of mill equipment out there, what was the market rental value for equipment of that kind and character in this vicinity here during the period from June 4th, 1936, to October 15th, 1937?

MR. HAWLEY: Objected to as not being competent, relevant or material, and the witness is not competent to answer and it is not in issue.

THE COURT: Are you familiar with the reasonable market rental in that vicinity on the date referred to of the property specified in this list? The question is directed to the equipment as listed there.

A. Yes.

THE COURT: The objection is over-ruled.

Q. What was the rental market value for all the equipment as a whole?

MR. HAWLEY: We make the same objection, if the Court please.

THE COURT: Over-ruled.

MR. HAWLEY: Exception.

Q. What was the rental market value of the mill equipment?

A. I must segregate it.

Q. Well, do so.

A. The air receivers,—

Q. —The mill equipment.

A. The Marcy Ball mill installed, ten per cent of the depreciation value per month, and the Mac-Intosh pneumatic flotation machine,—the flotation cells, five per cent per month; the continuous filter if properly covered at the time of installation, ten per cent value per month; the classifiers, five per cent of the depreciated value per month; the clean-up pen, ten per cent of the depreciated value per month; the sheave wheels is not milling equipment; it is mining equipment, and that is at ten per cent per month; the grizzly bars, ten per cent per month, and the reagent feeders, five per cent per month.

Q. In renting equipment in this market, that is, in this vicinity, in determining the rental mar-

ket value on this equipment, for what period does that continue?

A. For a period, in nearly all cases, it is rented with an option to purchase, with the rental to be applied on the purchase price.

Q. For what period is the rental charged?

A. The basis of thirty days.

Q. When does this rental start to run?

A. From the time it is moved from our sheds, or yards.

Q. And when does the rental cease?

A. At the time it is returned to us in good condition.

Q. Does it make any difference in the rental whether the equipment is used or not used?

A. No, sir.

I place a value on the Marcy mill of \$3,800.00; on the blower of \$550.00; on the porcelain filter \$1,800.00.

“The model C classifier, \$850.00; one clean-up pen, \$300.00; the sheave wheels, four foot diameter, \$10.00 each for three of them, and one six-foot diameter, forty dollars. That is the valuation on the sheave wheels, but I am not maintaining that it is mill machinery. One set of grizzly bars, \$20.00; the reagent feeder, \$80.00.

Q. Now, Mr. Parsons, I wonder if you will turn to the electrical equipment, and in view of the fact that the rental is based on the value, give

us the value of the separate pieces of equipment as you have them.

A. The Allis-Chalmers Manufacturing Company continuous duty induction motor, seventy-five horse power, 550 r.p.m., 440 volts, the appraised value is \$727.20; one Allis-Chalmers induction motor, one hundred horse power, 440 volts, 1750 r.p.m., I checked that, and it is in very poor condition and must be rewound, and my opinion is that it is not worth over one hundred dollars; the U.S. Electric Manufacturing Company's induction motor, seventy-five horse power, 450 volts, 1200 r.p.m., \$476.00; the General Electric induction motor, five horse power, \$65.00; —I guess I gave that before; and the General Electric motor type KT, fifteen horse power, \$228.80; one Western, — or Westinghouse electric induction motor, type CCL, fifteen horse power, that was torn down, and in checking it it is not worth the repairs, and I placed no value on it; the Westinghouse Electric Company induction motor, CCL type, fifteen horse power I appraised at \$145.60; the Westinghouse Electric Company motor, three horse power, \$46.40; the General Electric Company fifteen horse power induction motor, \$145.60; the General Electric induction motor seven and a half horse power, it is listed as seven horse power, but it is a seven and a half horse power,—

Q. Seven and a half horse power?



A. Yes, instead of seven horse power, and that is valued at \$224.00, — no, pardon me, that is \$73.60 on the seven and a half horse power motor. The Westinghouse Electric & Manufacturing Company induction motor, thirty horse power, \$224.00; the General Electric induction motor, three horse power, \$46.40; the Allis-Chalmers motor, a hundred twenty-five horse power, \$896.00; the Fairbanks-Morse single phase, one horse power motor, \$48.60; the General Electric Company, one and a half horse power motor, \$21.50; the Western Electric centrifugal five horse power motor, \$65.00.

Q. Now, Mr. Parsons, I wonder if you would return to the other equipment which is listed under automatic starting equipment, and give us the appraisal on the various items there.

A. The Union Manufacturing Company magnetic switch; 125 horse power, that is a magnetic starting switch, 440 volts, \$315.00; the Union Manufacturing Company starter for controller, 125 horse power, 440 volts, \$160.00; three section theostat, 440 volts, \$60.00; the Westinghouse Electric & Manufacturing Company theostat controller, \$123.00; the Cutter Hammer Manufacturing Company switch, \$9.50; the two section Cutter Hammer rheostat, \$20.00; three section Western Electric Company rheostat, \$30.00; the externally operated electric switch, or Trumbell safety switch, \$9.50; one enclosed electric switch, \$9.50;

potential starter for one hundred horse power, three-phase Allis-Chalmers motor, \$83.80; one push button starter switch, \$3.00; General Electric theostat, \$35.00; Westinghouse safety switch, \$9.50; Trumbell Electric Company enclosed switch, \$9.50; Trumbell externally operated switch, \$9.50; Trumbell Electric Company enclosed switch, \$9.50; Westinghouse Electric Company auto starter for motor, \$15.00; one A. G. Electric Company switch, \$9.50; Westinghouse Manufacturing Company auto starter switch, \$15.00; Westinghouse Electric Company forty-five horse power auto starter, \$40.00; one A. G. Electric Company switch, fifteen horse power, \$12.50; General Electric Company starting compensator for 125 horse power motor, with fuse block, \$315.00; one Cutter-Hammer Manufacturing Company transformer starter, seventy-five horse power, with fuse block, \$50.00; one A. G. Electric Company switch, two-pole, \$2.50; three jack-knife switches, \$3.00, — that is three jack-knife switches at one dollar each, making a total of three dollars; Westinghouse Electric Company auto starter, \$15.00; General Electric Company starting compensator, five horse power motor, \$72.80; Westinghouse Electric Company auto starter, \$15.00; Trumbell Electric Company safe switch, \$9.50; one Cutter-Hammer Company current auto starting switch, with thermal cut-out, \$20.00; three General Electric Company primary

cut-out type C, 7500 volts, \$27.00.

Q. That is all of that type of equipment?

A. Yes, sir.

Q. Now, Mr. Parsons, directing your attention to the jack hammers, are you familiar with the market rental value of jack hammers in this vicinity during the period of from June 4th, 1936 to October 15th, 1937?

A. Yes, sir.

Q. What would you say was the fair rental market value of jack hammers during that period?

A. If they were to use it a week it would be two dollars per day; if they used it for a longer period we cut that price to a dollar fifty a day for continued service.

Q. One thing I intended to ask you about, in giving the appraisal of this property in its entirety, I call your attention to the mining cars.

A. Yes.

Q. In appraising that property, how many mining cars did you appraise?

A. Three mining cars there that I appraised.

Q. How many did you fix a value on included in this list?

A. One mining car.

A. You only fixed the value on one mine car?

A. Yes.

Q. Did you use the best or the poorest?

A. Well, they were all about equal, with one

good body, worth \$15.00. The wheels and trucks were not worth anything. The body on the cars is the only way I appraised it.

Q. You only put in \$15.00 for the appraisal under this altogether?

A. Yes.

Q. Are you familiar, Mr. Parsons, with the rental market value of the starting equipment in this vicinity during the period of from June 4th, 1936 to October 15th, 1937, of a type similar in kind and character as described in this list?

MR. HAWLEY: We object to that as it is not competent, relevant or material, and no foundation is laid for this.

THE COURT: Over-ruled.

MR. HAWLEY: Exception.

THE COURT: The exception is allowed.

A. Yes, sir.

Q. What would be a fair rental market value for that type of equipment?

A. It is the placed the same as the motors, ten per cent of the depreciated value per month.

Q. I will ask you to turn now to the compressors, are you familiar with the market rental value of blowers in this vicinity during the period from June 4th, 1936 to October 15th, 1937?

A. I have a compressor listed.

Q. I meant the compressor.

A. However, it is not a compressor; it is a vacuum pump, instead of a compressor.

Q. Are you acquainted with the rental,—with reasonable rental or the market rental value of that type of equipment in this vicinity, during the period of from June 4th, 1936 to October 15th, 1937?

A. Yes, sir.

Q. Will you give that to the Court and jury?

A. It is ten per cent per month of the depreciated value, the same as the others.”

Q. What value do you place on it?

A. I value that at \$350.00.”

#### CROSS EXAMINATION.

I did not make an inventory of the property myself, but took the list handed to me by counsel. I used a General Electric catalog for the original price of most of the items and in comparison to that I placed the price that I felt the property was worth. Practically all the electrical manufacturing companies' list prices are the same for certain services. I get the value of electrical equipment from original bills that I have purchased from other companies. I know where there are for sale some machines like those listed and I have some of them for sale. In order to get the machinery list I looked up the names and I know also where some of those machines are for sale and I also have some of them for sale.

“Q. When you valued the Marcy Ball Mill, where did you get that price? How did you start?

A. I have a quotation on a Ball mill from Medford, Oregon, setting on a concrete base, and as they say, it is there with liners about half worn out. It has no good herring-bone. The Pacific States Mines are holding that for \$3500.00, and this has herring bones, which makes it about four hundred dollars more, and not only that, we have a Ball mill at Atlanta which we have quoted for \$3000. This is a better mill and easier to sell than the mill we have and are offering for sale.

Q. Did you go to a catalog to find the original cost?

A. No, sir.

Q. Then you base the valuation of the Marcy mill upon what someone at Medford, Oregon, has quoted you?

A. And also what the Sawtooth Company says they will take.

Q. That is your own personal mill that you bought?

A. And I have known other mills.

Q. The classifiers, I notice you have two figures on that?

A. The first is the new price.

Q. Where did you get that?

A. From the catalog and the general price of equipment that we have, and then I made the

proper depreciation after looking at that classifier.”

I am very well acquainted with the equipment and know it is a recent make of the equipment that I priced, and I priced it accordingly. I would sell the classifier for \$350.00 right here. I would sell the 125-horse power Union Manufacturing Company's starter at \$160.00. If it had to have all new contacts it would not be much of a repair and I allowed enough for that. That is the value to the customer if he wants to purchase it, and I would expect to get that for it. The starter which I have priced at \$160.00, that would be the selling price if I purchased the entire equipment at the Lincoln Mines. All of the prices I have fixed and quoted are those which I think I should get as a seller of that property if I had it in the Boise yard.”

In fixing the prices I have fixed and quoted prices which I think I could get as a seller of that property if I had it in the Boise yard.

“Q. And that is true of each of the articles, the selling price, or the market value, which you have announced here in Court?

A. I cannot guarantee that, because I was checking the equipment and giving my best opinion of what it is worth. I may be in error, of course, on some of that equipment.

Q. Where would you be in error.

A. Possibly I would lower the price twenty-five dollars on one article when I sold it, or

possibly I would raise the price twenty-five dollars, but that is my best judgment of what it would sell for. I am just making an example there that I would raise or lower the price twenty-five dollars. You might pick out an item and sell it for fifteen dollars more, and I might put a price on there that would not hold to the cent. I am giving my best judgment. I may have to vary on the selling price, but that is my best judgment, and that is the value it should have. It should be that valuable to the customer.

Q. All of which means and amounts to the fact that you are giving us so far as you have specifically set forth the price of specific articles, you are giving us what you consider your best judgment of what the customer would pay for them at your yards in Boise?

A. Yes.

Q. Ready to haul it away to his place?

A. Yes.

Q. And that is what you base this valuation on?

A. Yes, sir."

Respecting the motors, all of the big companies list their stuff at the same price. There is no difference between a ten-year-old and a five-year-old motor. In some cases, I would rather have a fifteen years old than ten years old. I saw these motors, and, being familiar with motors, looking at the insulation,



and then when it was in poor condition, I depreciated it for that condition, and when it appears to be in good condition and so that there was a good clearance, I felt I was in the clear on the price. If the motors required it, I would make an allowance for rewinding.

In examining the motors I did not take over five minutes to a motor. I figured the motors in each case separately. The motor valued at \$727.20 is 80 per cent of the new price at the factory and by me represents what I consider the fair market value to the customer, what it would be worth to him.

“Q. And you would expect to have it to turn over to him at Boise at that price, that is, that would be the price at Boise, Idaho?”

A. No, not likely. I would sell it at the property. If I purchased the equipment of the Lincoln Mines I would likely, in preference to moving it, put a watchman there and sell it out there. I would sell it out there similar to the way that I sold it at Atlanta.

Q. There is a market value at the Lincoln Mines, is there?

A. Yes.

Q. You think there is a market value for this property at the Lincoln Mines?

A. It is as good as the Lincoln Mines as it would be at Boise; a difference of twenty-six or twenty-eight or thirty miles doesn't depreciate the

value, and many customers would rather take it off the base in preference to buying it here at Boise and have it out in the weather.

Q. Uniformly throughout you have taken eighty per cent of the list price on this equipment?

A. No, not constantly. Some places I have lowered the price due to the fact that the equipment wasn't in good condition, but the motors are almost constant in price, the motors in good condition, that is, they were all in good condition, only one that I marked otherwise, and depreciated the value more than twenty per cent, but the others were quite consistent."

I had a 50 horse power motor and 100 horse power motor last June, but I haven't had a 75 horse power motor. We find some motors a month after they have been out are in worse condition than after some have been used for a few years. Naturally I pay very little for those. I would give a much better price for the motors of some manufacturers than for others. There are some motors manufactured in 1912 and 1913 that I would pay a larger price for than some of those manufactured in 1922, which would be the wrong type.

"A. I believe all these motors are worth eighty per cent of the original value, especially to a party that wants to use them, and I would recommend them to a customer in preference to buying a new motor.

Q. You think that this price that you have

given us is the price and the market value generally that would prevail for these motors in Boise?

A. Yes, that is my opinion."

I buy from Udell's and Olson's and Baxter's. When a customer wants to purchase a motor that I do not have, these dealers give me a discount on the price on a similar motor. I put on the blowers and the fans the same price that I have on equipment sitting on the floor, the governing price on that equipment is the price that we are selling similar equipment for. The price for the compressors I got as follows: I sold a compressor of the same size. I am holding it at Atlanta. The compressor here is a little bit smaller and I am pricing it at \$100 lower than the vacuum pump at Atlanta. I have known others to sell compressors like these. I am valuing the equipment at the Lincoln Mines not in consideration of my buying it and bringing it in. Possibly I have been misunderstood here. I would charge more in Boise for the heavier equipment, but not for the lighter.

I am making the price at the Lincoln Mines not in Boise and I would sell it at Boise for the same price as I would at the mine.

"Q. (By Mr. Hawley) I want to ask you, Mr. Parsons, in your estimate of the value of the mill and its equipment, as I understood it, your estimate was based upon your general knowledge, and not upon any list price, that is, no listing of that type of machinery?

A. Yes.

Q. That is true?

A. No, there is a new price, and also from my knowledge of what similar equipment has sold for.

Q. It was, of course, based upon the mill in place?

A. Yes, sir.

Q. And in testifying concerning the possible rental value of the mill you did not base that upon the rental price for such property prevalent in the vicinity of the Lincoln Mine, or in Boise, but on the rental price from other states?

A. I would say Boise and in this vicinity.

Q. Did you know of any mill of that size that has been rented?

A. Not in this vicinity.

Q. Then there is no criterion or standard of a mill of that type in Boise and in this vicinity based on actual experience in Boise or in the vicinity of the Lincoln Mines?

A. I have had inquiry around here on the rental of mill equipment.

Q. Now, would you please answer my question.

MR. HAWLEY: I will ask the Reporter to read it.

(Question read by the Reporter.)

A. No.

Q. The rental basis that you take was from your experience in other states?

A. In Idaho, as well as in other states."

"Q. And your figure on the rental for that mill in its condition at the present time is not based upon any actual rental experience in Boise, or in the vicinity of the Lincoln Mines?

A. Not any rental experience, no.

Q. But it is upon your experience in other states, or in other and remote sections of Idaho?

A. Well, here in Boise. I have had numerous inquiries on the pricing and the rental price on mill machinery, so that there possibly will be a demand for that, and I am basing it on the fact that this locality will likely rent, as well as other localities.

Q. That is on a future estimate, a possibility?

A. Yes.

Q. But it is not based on any actual experience?

A. No actual rental."

There is no difference between my valuation of the property as of October 15, 1937, and my valuation of it as of June 4, 1936.

I value the 7600 feet of pipe on the list here that is in the ground from the Marguerite shaft to the

Lincoln Mines at \$3448.26, and the value of the part off of the ground at the same rate per foot. The value of the piping would be 40 per cent of the new pipe.

### REDIRECT EXAMINATION

“Q. Just as Court was about to recess last night The Court asked whether you had made any calculations of the rental value to which you had been testifying?

A. Yes, that is right.

Q. I will ask you if you have of the property testified to and described in Exhibit No. 12, I will ask you if you have calculated the rental value which you have testified to for the period of from June 4th, 1936 to October 15th, 1937? And in making your calculation for the sake of convenience I will ask you to use the period of sixteen months even. Now, have you made such a calculation?

A. Yes.

Q. Will you give the aggregate of that calculation, the total of the rental value of the property as you have calculated it, the totals?

MR. HAWLEY: That is objected to as not being relevant, competent, or material. It is not based upon any facts; it is conjectural, and has no foundation in fact in this case, there being no foundation for the admission of any rental value.

**THE COURT:** Over-ruled.

**MR. HAWLEY:** Exception.

**THE COURT:** On this pipe that you have been discussing, the proportion on that pipe?

**MR. LANGROISE:** The total is what I was asking for.

**MR. HAWLEY:** May I add to the objection, particularly calling attention to the testimony of the witness with reference to objecting to the rental value of the mill property?

**THE COURT:** Yes; you may add to your objection, and the same ruling applies.

**MR. HAWLEY:** Exception.

**Q.** And what,—

**THE COURT:** What was the testimony involved here in regard to this mill. He started in with the value, and then the basis?

**MR. HAWLEY:** That is what I wanted to add to my objection, the basis of the rental value of the mill.

**MR. LANGROISE:** He gives the value of the mill and says that the rental value varies, that is a certain per cent per month; on some property it was ten per cent, and on some, five per cent.

**THE COURT:** And what was the value of

the mill?

MR. LANGROISE: He values each of the pieces, the units.

THE COURT: Your objection will be overruled, Mr. Hawley.

MR. HAWLEY: Exception.

Q. I want the total of all the rental of equipment listed in exhibit No. 12 based upon your testimony.

A. \$18,460.96.

Q. In giving that rental value of that equipment did you include any rental value of any pipe, any of that 7600 feet of pipe?

A. No, sir."

### RECROSS EXAMINATION

The total value of the property as I gave it was \$16,949.16, and the rental value that I fixed for the period of one year and four months is the sum of \$18,460.96, and I think that is a fair rental value and at the standard price. I think it is fair to charge more for renting the property for one year and four months than the entire property is worth. I do not think that the property depreciated any in value from June 4, 1936, to October 15, 1937. I understand the mill did not operate during that time. I think the rental value of the mill is ten per cent of its value per month. In ten months the rental on that basis would set up the entire value of the property.



“Q. I think you also stated yesterday that in connection with the rental, the rental value, as you were defining it, it was usually coupled or rather that it was the usual practice to couple that kind of rental with an option to buy, or a regular installment sale of the property?

A. No, not necessarily.

Q. Wasn't that the usual practice?

A. No, sir.

Q. What did you say as to that?

A. In some cases that is done.

Q. Is there a standard practice about that?

A. No standard practice.

Q. Your rental of ten per cent per month is,—that figure is just the same whether it is a rental just outright, or whether it is coupled with the installment purchase contract, or agreement to buy? Is that true?

A. There may be some variation.

Q. What would be the variation,—not in your own practice, but the general practice that you have been testifying to which is prevalent, as you say, in this community?

A. About the only way I can explain that is for example, equipment goes out for use, and they use it for three or four months, and wish to return it. They are charged by the month for it, but if the customer keeps it for six or eight

or nine months, then of course it is only good business that he comes in and makes a contract or agreement to purchase it.

Q. It is only good business, you say, but what is the practice?

A. That would be the practice.

Q. It certainly is good business?

A. Yes, and that would be the practice.

Q. The usual thing in a purchase of machinery or equipment of great value, when the equipment is rented out,—the usual thing is that there is an understanding that the rental applies on the purchase price? Is that not true?

A. Not always.

MR. LANGROISE: We object to this as it is assuming the existence of a fact that is not shown in this case.

THE COURT: You are testing this man's qualifications on cross examination. This witness has given an opinion as to the rental value of this property. Is there any evidence here that there has been any mills rented in this vicinity? If not, then we can go to the second question, if there has been nothing done, and if there is not market, yet you have a right to show by his experience what he has arrived at, and how he has arrived at it, whether there is a standard or not. I think the question is proper.

The objection will be over-ruled.

Q. Is there any other rental practice for any part or any type of the equipment and the machinery involved, the property which is involved in this case, which you have given here in your estimate, or opinion, other than the practice of this ten per cent, or the percentage charged?

A. Not any general practice that I know of.

Q. Then, with the exception of the little property which you say is not based on the practice here, but on some other, then the practice in the rental of all of the other property, and the only practice in connection with the rental of all the other type of property is the percentage basis of which you have testified, and strictly on that percentage basis?

A. Not strictly. There may be others.

Q. What other calculation is used?

A. That is the average.

Q. But isn't there any other practice, other than this percentage method used in this vicinity?

A. Not as a standard known to me.

Q. Then you are not aware of any other instance of rentals of any of the types of equipment, —I am not going to specify each type,—other than the percentage method?

A. Is that including the motors?

Q. I assume that you know this whole prop-

erty, Mr. Parsons. That includes each and every type.

MR. LANGROISE: We object to this. It is too general.

THE COURT: He may answer.

A. Yes, other equipment has been rented, but I don't know how they calculated the basis of rental on it.

Q. Then there is property of this type which is included in this controversy which has been rented but you do not know what the basis of that rental is?

A. In some cases equipment is rented, but I was not acquainted with the conditions involved.

Q. Well, Mr. Parsons, is your testimony here based on the question of rental of equipment on your personal experience?

A. Experience and knowledge. I have that others have paid this amount.

Q. It is based upon what you and your company do in the matter of rentals?

A. Yes, and knowledge of bidding on the equipment."

I know no other way to figure rental than on the percentage basis and understand that the practice of other men in the business is the same. I know of such practice.

"Q. You said a little while ago there are

items of this equipment which are rented on a different basis than the percentage basis. Do you mean now that all rental of this type of equipment is on the percentage basis? Is that the practice in Boise and in this vicinity?

A. Not all. For instance, if I may make an example: If there is a party wanting to rent a motor, for instance, for only about four days, just to replace a burned out motor until they have the other one repaired, there would be a minimum charge, and it would not be based on ten per cent, but would likely be much higher than ten per cent per month, because we cannot afford to put it out for four days for ten per cent.

Q. And is that the only exception to the rental practice in this community, that is, is this example which you have just suggested the only exception to the percentage practice?

A. I cannot say.

Q. You don't know?

A. No, sir.

Q. Are there any rentals charged other than the percentage basis on this type of property?

A. Not that I know of.

Q. Now, Mr. Parsons, isn't it generally a matter of contract between the parties, the party renting and the party having the property to rent?

A. It is a contract, yes.

Q. And it is generally a matter of agreement between the two of them as to what rental should be paid?

A. Yes.

Q. And there is no general practice about that, the parties make their own agreement?

A. Yes; they make their own agreement.

Q. And that is what is done with most of the property of this type rented around this country? The two make their own agreement?

A. Certainly.

Q. And they make it the way they want to make it, not according to any rules binding upon them?

A. No rules binding.

Q. Did you see each and every one of the great number of articles that you viewed in the three hours inspection?

A. No, some of them I didn't see.

Q. Then you have valued much of the property without actually seeing it?

A. That was as to the catalog values.

A. Yes, sir."

### REDIRECT EXAMINATION

I examined the Marcy Ball mill, the filters, the classifiers, motors and starting equipment to the best of my ability without dismantling them and checking the inside.

RECROSS EXAMINATION

“BY MR. HAWLEY:

Q. In order to know the condition of the Marcy Ball mill, the condition of the gears, and the condition of the working parts, particularly the liners inside, the March mill would have to be dismantled?

A. You would have to pull the man holes.

Q. You didn't do that?

A. No, sir.

Q. And you don't know the condition of the working parts?

A. Not of the liners.

Q. The liners are about one-third of the value?

A. That is approximately right.

Q. And you didn't examine the gears?

A. I examined them.

Q. Would you have to get inside to find their condition, to have them turned over, that is, to turn the mill?

A. No, sir; the gears are in good condition and the pinions, I didn't have to go inside to check the gears.

Q. So far as the motors and the rest of the equipment are concerned, you really,—to know what you would pay for that if you were buying it, you would really have to go into it more thoroughly?

A. I would check it closer.

Q. Closer than you did in this case, because you didn't have the time.

A. That is it."

### REDIRECT EXAMINATION

In examining the mill, in order to form an opinion as to its value, there is a scoop and scoop lift which I noticed is hardly worn, but I don't know whether there was a new scoop and scoop lift since the original one.

F. J. ARNOLD, called as a witness for the plaintiff and being sworn, testified as follows:

My name is F. J. Arnold. I have lived in Boise off and on for 25 years. I am a mechanical engineer and have been superintendent of Baxter Foundry in Boise, Idaho, for the past six years.

We rent equipment there. I am familiar with the equipment located on the Lincoln Group of claims near Pearl as I was through the mill when it was running several times in 1932 and 1933 when Mr. Phillips was there. We were furnishing quite a little material for the Lincoln Mines and we would go out and measure what was required there, and I noticed the machinery was in good working order. I am superintendent of the Baxter Foundry Machine Shop. We have a foundry as one branch of the concern. I have designed machines and machinery and repaired machinery and I have done this since I have learned my trade, about 45 years ago, and I have been continuously engaged in that work. I am familiar with the



reasonable market value for the rental of used machinery and equipment in Boise and vicinity during the period from June 4, 1936, to October 15, 1937, of the type I saw in the Lincoln Mine and mill on the occasions when I was there in 1932 and 1933. The reasonable market value of that type of equipment was ten per cent of the value of the machinery per month or more, the rental starting when the equipment is taken out of our establishment and ceasing when it was returned there, and it does not make any difference whether the equipment was used or not when it was gone from our establishment.

### CROSS EXAMINATION

To my knowledge the only way that any of the types of equipment or machinery covered in this case is rented is on the percentage basis based on its value. I do not know if there is any rental based on a cash basis.

My answer is based on what the Baxter Foundry charges for renting equipment and material and what it has to pay when it rents material. I cannot say right off without looking at the books what kind of material we rented between June 4, 1936, and October 15, 1937. I am superintendent in charge and know what is going on, but I cannot tell off hand any articles that were rented in the space of that year and four months. I cannot name a single article either that we rented or was rented to us. I would have to refresh my

memory. As to the single articles which I rented during that time, I would have to refresh my memory. I remember that between June 4, 1936, and October 15, 1937, I rented machinery from other concerns in addition to what I rented out and for which they made me a charge of 10 or more per cent.

I don't know whether from June 4, 1936, to October 15, 1937, in Boise or vicinity any mill of this size was rented.

Exhibit No. 15 was introduced and read as follows:

"I, Charles M. Close, Secretary of the Huron Holding Corporation, hereby certify that the following is a true extract from the minutes of a meeting of the Huron Holding Corporation duly called and held on the 9th day of February, 1932, at which a quorum of directors was present.

The chairman then stated that the assets to be acquired from the Manufacturers Trust Company and the Chatham-Phoenix National Bank & Trust Company were of such nature as to require the supervision and attention of an agent equipped to handle and liquidate such assets. After discussion, upon motion duly made and seconded, the following preambles and resolutions were unanimously adopted:

"WHEREAS, substantially all of the assets of this corporation are of a nature which will require careful supervision and attention over an

extended period of time to obtain the ultimate realization, therefrom; and

“WHEREAS, this corporation is lacking in the necessary personnel, equipment and facilities for the proper supervision of and attention to the liquidation of the assets of this corporation;

“NOW, THEREFORE, BE IT RESOLVED That Manufacturers Trust Company, a New York Corporation, 55 Broad Street, New York City, be and it hereby is designated, constituted and appointed agent of this corporation to supervise and attend to the liquidation of the assets of this corporation and to the conversion of the same into cash, with full power and authority as such agent to demand, to institute legal proceedings for, to collect, and to receive all moneys or other proceeds realizable upon the assets of this corporation, either of principal or interest, and for and on behalf of this corporation; to execute and deliver receipts, releases and discharges therefor, and to effect and compromise for and on behalf of this corporation any and all claims for such sums, and on such terms as said agent shall deem satisfactory and advantageous, and it was further resolved that this corporation reimburse said Manufacturers Trust Company as agent of this corporation for all costs, expenses and disbursements, which it may make or incur as agent of this corporation aforesaid, and that

the officers of this corporation be, and they hereby are, authorized and directed to remit to or upon the order of said Manufacturers Trust Company from time to time such costs, expenses and disbursements upon receipt of proper bills or statements therefor." And it is signed "Charles M. Close, Secretary."

FRED TURNER was recalled as a witness on behalf of the plaintiff and having been previously sworn, testified as follows:

During the time that I have been employed from July, 1933, up to the present date at the Lincoln Mines I have made purchases, under direction and supervision of Mr. Fozard, of lumber and run accounts for purchases for the mine and have used electricity and taken care of that account for Mr. Fozard and myself. These accounts have been carried in the name of Alexander Lewis and still are.

### CROSS EXAMINATION

I have used electricity for the house, an electric range and for the blacksmith shop. I have used one motor which is a one horse power motor in the blacksmith shop. That is listed on plaintiff's exhibit No. 12. I used one other motor on the blower in the blacksmith shop once a week. That motor is not listed on plaintiff's exhibit No. 12 and is not the Lincoln Mines Operating Company's property. I used electricity only for lighting the residence, for cooking and in the black-

smith shop. The only property listed on plaintiff's exhibit No. 12 that was used by me or by any one during the time that I was on the Lincoln property is one anvil, steels and drills, 50 lbs. of fish plates listed under "Mine Supplies, Miscellaneous"; three pair blacksmith tongs listed under "Blacksmith Shop, Miscellaneous." I have used one wheel barrow listed under the heading "Lumber Shed, Miscellaneous." Under the heading "Hammers" I have used one 8 lb. double jack hammer, one 7 lb. double jack hammer, two 4 lb. single jack hammers, one hammer, assay office. Out of the entire list of property covered by plaintiff's exhibit No. 12, I have specified all the property which was utilized by me or while I was on the Lincoln Group of Mines. When we sank the shaft and ran cuts we used one car, some cable, hose, rails, picks and shovels, made our own drills and did not use any machine drills and did not use any machinery. The buildings located on the Lincoln Mines are a mill, a hoist shed, two hoist sheds, a lumber shed, a store shed, a boarding house, a bunkhouse, assay office and barn, an office or main dwelling house, two smaller dwelling houses and another dwelling house. I have used the house or office building, the barn and one of the smaller houses, the timber shed, blacksmith shop and the store house.

### REDIRECT EXAMINATION

The equipment which I used was such as I wanted and needed to use.

“MR. LANGROISE: We ask at this time permission to ammend the complaint of the plaintiff in this action to conform with the proof, by substituting for Exhibit “A,” which is attached thereto, this Exhibit “A” which is a copy of Exhibit No. 12.

MR. HAWLEY: I shall object to that. It is not timely made, and it is not a proper amendment to be made at this time. The plaintiff in this case through its president has set forth a great list of property which he claims, setting it forth specifically, and there should be some statement made by him in order to change this. I think the matter should be explained.

“MR. CASTERLIN: But assuming, your Honor, there is some difference in the property here, this is just a part of the whole. This is some of the same property included in the complaint. We have tried this matter, and the testimony has gone in without objection. They have admitted here this was held by Ojus Mining Company, the owners of the Lincoln Mine, or the Lincoln Mines Operating Company or the defendant, and it has only been a process of elimination to prove what was owned by the Lincoln Mines Operating Company.

“THE COURT: But here we are trying to determine whether the defendant or the plaintiff owns this.

“MR. CASTERLIN: If they had been taken by surprise they would have objected to any of the property except as described in the complaint, but without objection they have permitted it to go in, and there is no objection now that we are proving property not in the complaint on the ground that they were surprised. The proof has already gone in.

“THE COURT: I will state to Counsel that I have reached this view: This offer to amend, that is, if this offer to amend brings into the case any new description of property on the objection heretofore made as to the admissibility of Exhibit No. 12, I think it comes too late at this time. They would not have an opportunity to defend against this additional new property. If it does not bring in any new property you have a different situation. I haven't examined this myself, or checked the description of the property in the complaint, which I understand is in exhibit No. 12. I understand exhibit No. 12 contains also some additional articles to the exhibit which is attached to the complaint.

“THE COURT: I didn't know at the time that the exhibit 12 was offered that it included any additional articles. Does the record show that it contained different property than is contained in the original exhibit?

“MR. LANGROISE: The record may show

that it contains some additional property other than that described in the complaint, of the same type, kind, and character, and in many instances it is only corrections.

“THE COURT: But the descriptions are different?”

MR. LANGROISE: That is correct in some cases.

“THE COURT: The objection will be sustained.

### RECROSS EXAMINATION

There was no need for any other equipment or property listed on exhibit No. 12 other than I did use and I had no use for it at all.

Plaintiff rests.

FRED J. TURNER, called as a witness by the defendant, having been heretofore sworn, testified as follows:

The Westinghouse 15 h. p. motor and starter, the U. S. 75 H. P. motor, the General Electric 3 h. p. motor, the Westinghouse 30 h. p. motor, the Westinghouse 5 h. p. motor were all housed. The Fairbanks-Morse 1 h. p. motor, the General Electric 5 h. p. motor, the General Electric 7½ h. p. motor, the Westinghouse 30 h. p. motor, the General Electric 5 h. p. motor were also houses. The Allis-Chalmers 125 h. p. motor was outside the store house covered



with sheet iron. The Allis-Chalmers 125 h. p. slip link motor was in the Lincoln shaft hoist house and exposed. There was no protection for the Allis-Chalmers 100 h. p. centrifugal pump motor. The Fairbanks-Morse 5 h. p. motor was off of the property.

During the period from June 4, 1936, I was in charge of the property, engaged in prospecting, also repaired the mill and was a watchman. The nearest residence or occupied place is Pearl, about 1½ miles from this mining group. In the winter time I removed snow from the buildings. There is one tank pump which is not on the property and which I consented to being taken away. The mining work that I have done on the property was done with powder, steel, hammers and hand tools, and these were furnished, in addition to the tools that I have heretofore described with reference to plaintiff's exhibit No. 12, by the Huron Holding Corporation. It furnished power, timbers, rails, steel, saws, hammers, levels and other miscellaneous tools. I kept the various buildings locked while I was in charge, excepting the mill. When I found anything I could use in development work, I used it. The man there with me and I drove the tunnel about four hundred feet. I am sinking winces at the present time, close to the vein which is cut above in the tunnel. Mr. Phillips was on the property several times. I refused to allow him on the property in 1934, but after that did not refuse him. He never asked for any property excepting on June 4, 1936, when he was in with Mr. Langroise.

**CROSS EXAMINATION**

I refused him permission to take any of the property at that time. I knew there was a dispute in the latter part of 1934 as to the personal property, but I did not know what property was in dispute. I had a copy of the Alexander Lewis inventory, and I knew the property listed there, supposed to belong to Alexander Lewis. I knew as early as 1934, there was a dispute as to the other property, machinery and equipment upon the property which included the mill, general mining equipment, assay office stuff, household stuff and all outside and other stuff. When I bought powder, lumber, steel and other materials used in development work I charged it to myself. I sent invoices of the powder that I purchased back to Huron Holding Corporation and they paid the bill. I tried to get the people I was buying materials from to deal directly with Huron Holding Corporation and get their pay, but I found out that anybody connected with Lincoln Mines did not have good credit, so I had to go and get it myself and guarantee the pay and I had to have my credit rating looked up before I could get it. The Huron Holding Corporation furnished me with a petty fund. Huron Holding Corporation paid for miscellaneous equipment. I had an idea from what I heard what was claimed to be Lincoln Mines Operation Company property.

**WILLIAM A. HOPPER**, a witness on behalf of

the defendant, after being sworn, testified as follows:

My name is William A. Hopper. I am President and General Manager of the Gem State Electric Company with which I have been connected since 1920. Prior to that time I was for ten years general foreman for B. J. Hetherington Electric Company. I have had 27 years experience with motors. In 1933 I became acquainted with the motors on the Lincoln Mines Group. I have been selling motors personally since 1920 and with the other firm for ten years prior to that. About 35% of our business is buying and selling motors and I am familiar with the market price of motors in Boise and vicinity. I went around and took a look at them and tested them a little bit here and there and made some notations. I was up there this morning about 10 o'clock. I went around and took a look at the motors and tested them a little bit here and there and made some notations. I am familiar with the market value of these motors as of the period beginning June 4, 1936, and ending October 15, 1937. In my opinion, the reasonable market value of the motors is as follows:

1 h. p. Fairbanks-Morse motor .....	\$ 10.00
125 h. p. Allis-Chalmers .....	400.00
15 h. p. General Electric .....	60.00
75 h. p. U. S. Motor .....	225.00
5 h. p. General Electric .....	30.00
15 h. p. Westinghouse .....	75.00
3 h. p. Westinghouse .....	20.00

30 h. p. Westinghouse .....	160.00
3 h. p. General Electric .....	20.00
15 h. p. General Electric .....	45.00
50 h. p. Westinghouse .....	200.00
7½ h. p. General Electric .....	40.00
75 h. p. Allis-Chalmers .....	180.00
100 h. p. Allis-Chalmers .....	no value
1½ h. p. Wagner single phase motor .....	15.00

### CROSS EXAMINATION

I was examining the motors for about an hour. I would not pay the amount I estimate as the value for the motors, but would expect that price from some one wanting them. A motor that has been used for a period of a year or less is worth about 50% of the list value if it is in fair condition. I did not check the name plates or serial numbers of the motors. As far as the motors are concerned, I would prefer a new one, but there are some types of used motors that have more value than others. Ordinarily they rate about 50 per cent of the list value straight through. If I want a motor of a particular speed and type, that would make a difference in what I paid. I did not see the Allis-Chalmers induction motor, 75 h. p., 550 r. p. m., 440 volts, 60 cycles, three-phase. I really don't know if I found out there an Allis-Chalmers induction motor, 100 h. p. three phase, 60 cycle, 115 amp. 440 volts, 1750 r. p. m. serial No. 223BS823, but I did find a 100 h. p. Allis-Chalmers motor. I just tried to identify the motors on the list that I

had. The value of a motor depends somewhat upon the r. p. m. rating. As the r. p. m. decreases, the value goes up. The value increases from about 1800 r. p. m. and as you go down from that, the price increases. I found a U. S. 75 h. p. motor but I do not know the serial number, the voltage or the r. p. m. I found a General Electric 5 h. p. motor, but I did not get the serial number or the model. I found a Westinghouse 3 h. p. motor but I did not take the serial number or identify numbers or marks. I haven't any idea about the motors or the other information on the motors. I just checked the condition and paid no attention to anything else. I didn't see any Westinghouse 5 h. p. motor. Mr. Turner pointed the motors out to me.

### REDIRECT EXAMINATION

I did not particularly examine the electric starting equipment. I did examine a few switches, but not in detail. A few automatic starting devices carry the same relative value as the motors, that is 50% of the list price less the cost of reconditioning. If we were buying them, we would buy this equipment as cheaply as we could. Some of these switches cease to have any value, but the rest have a base value of 50% of the list.

W. I. PHILLIPS, called by the defendant for cross examination under the statute, having been previously sworn, testified as follows:

## CROSS EXAMINATION

During the period of time after the Lincoln Mines had abandoned the Lincoln Group in 1929 I did not remove any machinery. Whatever property the plaintiff had was left right on the Lincoln Group, by me as President. I did not employ a watchman to care for or look after it. I did not pay any taxes or insurance that I know of. That situation remained the same and was true until the time possession was taken of the Lincoln Group from the Ojus. The plaintiff had no other property in Idaho and was formed for the purpose of operating the Lincoln Group. After the plaintiff gave over the property under its option, the Ojus made some settlement with Chapman whom they had employed, for taxes, insurance and watchman on the property, but I don't know who paid him other than that. I was never billed by Lewis or the Manufacturers Trust Company for insurance or taxes or cost of watchman's services.

J. L. FOZARD, called as a witness for the defendant, after being duly sworn, testified as follows:

I am J. L. Fozard of Roseland, New Jersey, and am Vice-President of the Manufacturers Trust Company and a director of Huron Holding Corporation. I was employed from the fall of 1932 by the Manufacturers Trust Company up to May of 1935 and was then made Vice-President of the Manufacturers Trust Company. Up to the time I went to New York

I was in the mining business as a miner and engaged in all types of work as a miner, a foreman, superintendent, general manager, in fact, practically every position you find in connection with mining, both hard rock and placer mining. I first became acquainted with the Lincoln Group of Mines in the early part of 1932, about May. My duties in connection with the Lincoln Group—I have been advising the Huron Holding Corporation relative to trying to find some ore out there. I have not run the mill or any ore through the mill since the Ojus possession ceased nor recovered any ore or run any in the mill. Neither the Manufacturers Trust Company nor the Huron Holding Corporation have any interest in Idaho other than the Lincoln Group. I am familiar with their property and if there was any other mining operations I would be familiar with that. These companies do not carry on any mining operations other than are carried on at the Lincoln Mine in Idaho.

“Q. Are they carrying on any mining operation or mining business, to your knowledge, excepting in Idaho?

A. You mean in some other state?

Q. Yes; any where?

A. The Huron Holding Company has an item they are carrying on an abandoned coal mine in,—

MR. CASTERLIN: The question is, has it any other mining operations?

Q. Do they carry on any other mining operations other than those carried on at the Linclon Mine in Idaho? Do they carry on any other operations in any other state?

A. No, sir; I would say no."

#### EXAMINATION BY MR. LANGROISE

I went to work for the International Industrial Company which was liquidating a number of ventures in the fall of 1931 under the direction of officers of Huron Holding Corporation, and some were with the Manufacturers Trust Company, although I was paid by the International Industrial Securities. Huron Holding Corporation was organized in the early part of February, 1932. I had no connection with the Lincoln Mines Operating Company or the Lincoln Mines prior to the time I went into the employ of the Manufacturers Trust Company in 1932.

#### DIRECT EXAMINATION RESUMED

"Q. Have you any knowledge, independent of the record knowledge, that is, have you any knowledge of your own as to whether either the Manufacturers Trust Company, or the Huron Holding Company made any payment of taxes, or for the services of the watchman or insurance on this personal property left on the Lincoln group of mines?

A. The Manufacturers Trust Company paid



it up to the time the Huron Holding Corporation was formed, and the Huron Holding Corporation paid it thereafter.”

#### EXAMINATION BY MR. CASTERLIN

I got this information at meetings. I was told this. I got the information as to taxes paid by the Huron Holding Corporation from what I was told at meetings of that company. I came into charge of the Lincoln Mines about May, 1932. The taxes were paid by the Huron Holding Corporation in the regular course of business. It kept a set of books. I did not draw the checks or keep the bank books. The checks were usually sent to me with a note of transmittal and I forwarded them. I don't know whether the checks were paid. I never saw the cash books to see whether the cash was charged with the checks. I mailed the checks. I assumed the checks were cashed. The taxes included the five claims and the improvements. Some of the improvements belonged to the plaintiff and some did not. Some personal property belonged to the plaintiff. I knew there was some property of the plaintiff, but there was no segregation of the amount of the taxes. As I recall the tax notices, they were for improvements which belong to the group of mines. I assume that the mining equipment belonging to the plaintiff was listed under improvements on tax notices. That is my interpretation. I don't know as the taxing officers interpreted it that way. I just mailed the checks for some taxes to the col-

lector. The Manufacturers Trust Company paid the watchman at the property up to the time of the organization of the Huron Holding Corporation and the latter paid from the time it was abandoned by the plaintiff. I know that from reading correspondence and also being instructed by officers at the meetings. I did not handle the checks. I read the correspondence that they were forwarding the check to the watchman and also received his acknowledgment of receiving the check. I was on the property about March or April, 1932, making a trip to Carson and I was asked to come up here and the Huron Holding Corporation paid my expenses from Ogden up and back to Ogden. I was asked to report what they had and I reported the general surface conditions of the mine. I did not list the mill and machinery or report its general condition. There was a watchman there by the name of Chapman. I did not ascertain what property belonged to the Manufacturers Trust Company. I wrote the report of what was reported as the Alexander Lewis property about the time the Ojus Mining Company took the lease and bond on it, and at that time I had a list of the property belonging to Lewis signed by Phillips. I read the list attached to the agreement between Ojus Mining Company and Alexander Lewis. I do not recall what that list showed as to the claim of personal property. I saw the Lewis list and read it and knew that some belonged to the plaintiff. Afterwards in the fall of 1932 when the Ojus was operating I saw the prop-

erty. I was out there in 1933 after Mr. Phillips had quit.

I knew in a general way what personal property there was then on the property, but not specifically. I did not have an occasion to learn specifically each item. According to the inventory by Mr. Phillips, there was some Lewis property and some plaintiff's property there in 1933. In discussing the personal property at the Lincoln Group, I classified it in a general way as the Lewis property and other personal property as the plaintiff's property. In a general way I had an idea of the Lincoln Mines and the Lewis property. While watchman's expenses were being paid there was property belonging to Huron Holding Corporation and Manufacturers Trust Company that required the use of a watchman as well as other property and it required no more physical exertion on the part of a watchman to watch the plaintiff's property than it did to watch the property of the Huron Holding Corporation.

Alexander Lewis held mining property in other states the same way as he held mining property in Idaho. I have been in charge of the real estate department for over two years and am familiar with the mining operations of the Manufacturers Trust Company and the Huron Holding Corporation. The former is a banking corporation, doing a general banking business in New York. It owns certain mortgages which they service and liquidate. As far as mining interests are concerned, they have collateral in their

possession which they try to liquidate. These collateral activities they have in other states as well as in Idaho.

### REDIRECT EXAMINATION.

“MR. HAWLEY: I desire to offer as Exhibit No. 17 and No. 18 a chattel mortgage from the Lincoln Mines Operating Company to Mr. Phillips, and as assignment by William I. Phillips to Helen S. Pearson. These are copies which I have here.

MR. CASTERLIN: That is objected to, that is, both of the offers, as being incompetent, irrelevant and immaterial.

THE COURT: Where they issued prior to June 4th, 1936?

MR. HAWLEY: Yes.

THE COURT: What relevancy have they here?

(Argument of counsel.)

THE COURT: The objection will be sustained.

MR. HAWLEY: May we have an exception?

THE COURT: You may have your exception.”

The defendants offered Exhibit No. 17, which is as follows:

**“CHATTEL MORTGAGE**

**THIS MORTGAGE**, Made this 1st day of September, in the year of our Lord one thousand nine hundred and twenty-seven, by the Lincoln Mine Operating Company, a corporation duly organized and existing under the laws of the State of Idaho, the party of the first part to William I. Phillips of Miami, Dade County, Florida, the party of the second part, **WITNESSETH:**

That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, hereby mortgages to said party of the second part that certain machinery and personal property belonging to the party of the first part located in and upon what is known as the Lincoln Group of Mines situated in Gem County, Idaho, to-wit:

One No. 64 $\frac{1}{2}$  Marcy Ball Mill

One Dorr Drag Classifier

One Farhrenwald Oscalating Classifier

Two McIntoshe Neumatic Flotation Cells

One Flotation Cell Air Blower

One 75 cubic Air Compressor

One 35 cubic Air Compressor

One Dorr Thickner 8x10 complete with Mechanism

One Dorr Dewatering Tank and Mechanism

One Portland Filter, 8x8

One 75 H.P. Electric Motor

Two 15 H.P. Electric Motors

One 10 H.P. Electric Motor

One 5 H.P. Electric Motor

Two 3 H.P. Electric Motors

One Dodge Sedan; Motor No. A32601, Serial  
No. A 904309, Idaho 1927 License No.  
77741

Together with any and all other personal property belonging to the party of the first part, either mentioned herein or not, used in connection with the working and operation of said Lincoln Group of Mines;

And also any and all machinery and personal property added to the above described machinery and personal property, and hereafter acquired by the said party of the first part for use in the working and operation of said Lincoln Group of Mines;

to secure the payment of Forty-five Thousand (\$45,000.00) & No/100 Dollars, according to the terms and conditions of one certain promissory note, in words and figures as follows, to-wit:

\$45,000.00 Boise, Idaho, September 1st, 1927

On or before January 1st, 1929, after date, the Lincoln Mine Operating Company, a corporation for value received, promises to pay to the order of William I. Phillips Forty-five Thousand (\$45,000.00) & No/100 Dollars at the Pacific National Bank, Boise, Idaho, in

Gold Coin of the United States of America, with interest thereon in like Gold Coin from date until paid at the rate of eight per cent per annum, interest payable at maturity.

And in case suit is instituted to collect this notice, or any portion thereof, the said corporation promises to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

The maker, sureties, indorsers, and guarantors of this notice hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest.

IN TESTIMONY WHEREOF, the Vice-President and the Secretary of said corporation, under authority of a resolution adopted by its Board of Directors, have hereunto signed the name of the corporation and affixed its corporate seal.

(SEAL)      LINCOLN MINE OPER-  
                  ATING COMPANY

By Henry W. Dorman,  
Vice-President

ATTEST: Henry O. Dorman,  
Secretary

It is also agreed that if the said party of the first part shall fail to make any payment as in said promissory note provided, then at the option

of said party of the second part, his executors, administrators or assigns, the said note shall immediately become due and payable and said party of the second part may take possession of said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds to pay the whole amount in said note specified, and all costs of action or sale, including a reasonable sum as attorney's fees, paying the surplus to the said party of the first part.

IN WITNESS WHEREOF, the said party of the first part has caused its corporate name to be hereunto subscribed by its Vice-President and its corporate seal to be affixed hereto and these presents attested by its Secretary, the day and year first above written.

(CORPORATE SEAL)

LINCOLN MINE OPER-  
ATING COMPANY

By Henry W. Dorman,  
Vice-President

ATTEST: Henry O. Dorman,  
Secretary

STATE OF IDAHO, )  
COUNTY OF ADA. )<sup>ss.</sup>

Henry W. Dorman, Vice-President of the Lincoln Mine Operating Company, a corporation,



the mortgagor in the foregoing mortgage, deposes and says: That the foregoing mortgage is made in good faith and without any design to hinder, delay or defraud creditor or creditors.

Henry W. Dorman

Subscribed and sworn to before me this 7th day of September, 1927.

(SEAL)

L. L. Sullivan  
Notary Public for Idaho  
Residing at Boise, Idaho.

STATE OF IDAHO, )  
COUNTY OF ADA. )<sup>ss.</sup>

On this 7th day of September, in the year 1927, before me, L. L. Sullivan, a Notary Public in and for said State, personally appeared Henry W. Dorman, known to me to be the Vice-President of the Lincoln Mine Operating Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate above written.

(SEAL)

L. L. Sullivan  
Notary Public for Idaho  
Residing at Boise, Idaho.

STATE OF IDAHO, )  
 COUNTY OF GEM. )<sup>ss.</sup>

I hereby certify that this instrument was filed for record at request of N. Eugene Brasie at 35 minutes past 10 o'clock A. M., this 10th day of September, 1927, in my office, and duly recorded in Book 2 of C.M.R. as #4560.

Lillian M. Campbell  
 Ex-Officio Recorder

Fees, \$ .50 cts.

STATE OF IDAHO, )  
 COUNTY OF GEM. )<sup>ss.</sup>

I, Lillian M. Campbell, Ex-Officio Recorder in and for Gem County, State of Idaho, do hereby certify that the foregoing is a full, true and correct copy of the original Chattel Mortgage No. 4560, executed by Lincoln Mine Operating Company to William I. Phillips, dated September 1st, 1927, and filed in this office at 10:35 o'clock A.M., the 10th day of September, 1927.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 3rd day of July, 1936.

Lillian M. Campbell  
 Ex-Officio Recorder  
 Gem County, Idaho"

(SEAL)

The defendants offered Exhibit No. 18 which is as follows:

“This agreement made and entered into this the 6th day of August, A. D. 1929, by and between William I. Phillips of the County of Dade and State of Florida, party of the first part, and Helen S. Pearson, of said County and State, party of the second part;

WITNESSETH: That whereas the Lincoln Mine Operating Company, a corporation organized under the laws of the State of Idaho, did execute and deliver a certain chattel mortgage to the party of the first part on all of its machinery and equipment that it did own at the time of the execution of said chattel mortgage and any machinery and equipment it may become possessed of in the future;

And whereas the said chattel mortgage was delivered to the said party of the first part by the said Lincoln Mine Operating Company to secure the said party of the first part for the payment of certain money that the said party of the first part had loaned to the said Lincoln Mine Operating Company;

And whereas the said party of the second part has made certain loans to the said Lincoln Mine Operating Company and the said party of the first part desires to secure the said party of the second part for the payment of all loans made by

the said party of the second part to the Lincoln Mine Operating Company and on any loans the said party of the second part may make to the said Lincoln Mine Operating Company in future.

NOW, THEREFORE, In consideration of the sum of One (\$1.00) Dollars each to the other in hand paid, and in the further consideration of the sum of Six Thousand One Hundred (\$6,100.00) Dollars, which the said party of the second part is about to loan to the said Lincoln Mine Operating Company, the said party of the first party hereby assigns, sets over and transfers unto the said party of the second part, all of his right, title and interest in and to the said chattel mortgage for the purpose of securing the party of the second part for the loan of Six Thousand One Hundred (\$6,100.00) Dollars that the said party of the second part is now making, and all loans that have been made in the past or any loans that may be made in the future by the said party of the second part.

This agreement and assignment is made obligatory upon the heirs, executors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and affixed his seal this the day and year above written.

William I. Phillips (Seal)

Signed, sealed and  
delivered in the  
presence of us:  
Lora M. Wilson  
M. E. Howell

STATE OF FLORIDA, )  
COUNTY OF DADE. )<sup>ss.</sup>

Personally appeared this day before me, an officer authorized to take acknowledgements, William I. Phillips, who being sworn deposes and says that he executed the foregoing assignment of chattel mortgage for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Miami, Dade County, Florida, this the 6th day of August, A. D., 1929.

Helen M. Haynes  
Notary Public  
State of Florida at Large

(SEAL)

My commission expires: Dec. 13, 1932

STATE OF IDAHO, )  
COUNTY OF GEM. )<sup>ss.</sup>

I hereby certify that this instrument was filed for record at request of M. W. Hallam at 30 minutes past 11 o'clock A. M., this 20th day of

November, 1929, in my office, and duly recorded in Book 2 of Bonds and Agreements, page 426.

Lillian M. Campbell  
Ex-Officio Recorder

Fees, \$1.20

STATE OF IDAHO, )  
COUNTY OF GEM. )<sup>ss.</sup>

I, Lillian M. Campbell, Ex-Officio Recorder in and for Gem County, Idaho, do hereby certify that the foregoing is a full, true and correct copy of agreement and assignment executed by William I. Phillips to Helen S. Pearson as the same appears on page 426 of Book 2 of Bons and Agreement Records of Gem County, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 3rd day of July, 1936.

Lillian M. Campbell  
Ex-Officio Recorder  
Gem County, Idaho ”

“MR. HAWLEY: And We have nothing further.

THE COURT: Does the defendant rest at this time?

MR. HAWLEY: The defendants rest.

MR. CASTERLIN: And we have no rebuttal.”

MR. HAWLEY: I move for a directed verdict on behalf of Huron Holding Corporation on the ground that it has not been properly served with summons and complaint in accordance with the laws of the State of Idaho; that it has never been in the jurisdiction of this court. It has not been doing business, and was not doing business in the state at the time of the attempted service upon it.

Motion for directed verdict on the same ground was made on behalf of Manufacturers Trust Company.

Motion for directed verdict was made on behalf of the defendant, Fred J. Turner, for the reason that the evidence did not show he was in any way liable for damages, had filed a disclaimer, and the property has been returned.

“THE COURT: I understand this lawful detention, — or, rather, I should say the unlawful detention is claimed to be between June 4th, 1936, and October 15th, 1937. You are suing for unlawful detention of property, and these two foreign corporations, — now, let me ask, were they under the evidence here doing business in the State of Idaho in the sense in which the constitution and the state laws apply in order to give this Court jurisdiction? The holding of title to property by a foreign corporation would not be doing business. I understand we must go further to determine that; that they must have done some act to show that they were functioning, and doing

business in the state.”

“THE COURT: Do you agree the first demand was made on June 4th, 1936, on Mr. Turner, and that he declined to give possession?

MR. CASTERLIN: It is a matter of stipulation that on June 4th, 1936, demand was made on the owner or owners of this property.”

“THE COURT: I will state to counsel that the only thought I had is the relation between these two companies, the Huron Holding Corporation and the Manufacturers Trust Company at the time it is claimed that this property was unlawfully held between June 4th, 1936, and October 15th, 1937. Now, the only thing is this question of jurisdiction. We have to dispose of that first. If we haven't any jurisdiction then we haven't any power to go ahead and determine the question as to the values or anything of that kind. Was the Huron Holding Corporation representing the Manufacturers Trust Company? I think, perhaps, there is sufficient evidence to go to the jury. They were employing men, paying the bills, and so on. It is a question of connection between the two companies. Whether that is sufficient to keep jurisdiction in this case, I will say to counsel that you have clarified a lot of things that disturbed me considerably, and I think I will take a recess at this time until two o'clock, and will take the matter under advisement until then.”



“**THE COURT:** The principal question presented upon the motions of the defendants for directed verdict goes to the question of jurisdiction of this Court, which must now be disposed of, and being upon the evidence this inquiry requires an analysis of the testimony as to whether the defendant Manufacturers Trust Company, a foreign corporation, was doing business in the state of Idaho at the time it is alleged and stipulated that the personal property was unlawfully detained from the possession of the plaintiff, viz: between June 4th, 1936, and October 15th, 1937, when final demand for possession was made upon the defendant Turner. The evidence discloses that between these dates the defendant Huron Holding Corporation employed the defendant Turner who was in charge of the Lincoln Mines upon which the personal property was, and in whose name all of the acts as to the operation, the contract, the accounts, the payment of bills, and all such in connection with the mines were done. Prior to that time, on February 9th, 1932, an assignment, which is disclosed by plaintiff’s exhibit No. 3, was executed between the Manufacturers Trust Company and the Huron Holding Corporation, in which the Manufacturers Trust Company for a valuable consideration, set over, sold, transferred and assigned unto the Huron Holding Corporation the Lincoln Mines and certain other securities and mortgages, and other personal prop-

erty, and in this assignment, certain conditions appear, viz: It is expressly understood and agreed and is a condition hereof that said Huron Holding Corporation, its successors and assigns, shall in no event have any recourse against the said Manufacturers Trust Company, its successors or assigns, for any sum of money, interest, claim or other charge on account of or arising out of the assignment by said Manufacturers Trust Company to said Huron Holding Corporation of the stocks, bonds, notes, debentures, mortgages and other securities, and/or the subordinate right or interest therein, more fully described on said Schedule B attached hereto and made a part hereof, except such moneys as shall have actually been received by said Manufacturers Trust Company for the account of said Huron Holding Corporation pursuant to the following paragraph.

‘As to any subordinate right or interest covered hereby it is further expressly understood and agreed, and it is a condition hereof, that Manufacturers Trust Company, its successors and assigns, shall have, and does hereby retain full power and authority, either in its own name or in the name of said Huron Holding Corporation, its successors or assigns, to demand, collect, institute legal proceedings for and to receive any and all sums of money which are or shall become due, owing and payable by any and all persons whatsoever, and to adjust and compromise any and all

claims which may be disputed in good faith and on account of or arising out of the stocks, bonds, notes, debentures, mortgages or other securities in which any subordinate right or interest is hereby sold, assigned or transferred.

‘It is further expressly understood and agreed and is a condition hereof that Manufacturers Trust Company, its successors and assigns, will upon request of said Huron Holding Corporation execute, acknowledge and deliver, and will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers and further assurances of title and such additional instruments as Huron Holding Corporation shall reasonably require for the better assuring, transferring, confirming and assigning unto said Huron Holding Corporation the property, or any part thereof, hereby sold, assigned, transferred and set over, or intended so to be.’

As to the execution of the assignment which I have just referred to, the Manufacturers Trust Company owned the Lincoln Mines there. From that date it does not appear that the Manufacturers Trust Company performed any act, unless it is concluded that it did so by and through the Huron Holding Corporation. This brings us to a consideration of the principal question of facts: Was the Huron Holding Corporation representing or acting for the Manufacturers Trust Com-

pany at the time it is charged that the personal property involved here was wrongfully detained from the possession of the plaintiff? Prior to that time there were certain acts which took place with the Manufacturers Trust Company, but the inquiry now is: Did the relationship, if any existed, continue between these companies after February 9th, 1932? If none did exist, then the Manufacturers Trust Company had the right to transfer and sell the property to a holding company under conditions specified in the exhibit, and it became released from any act or conduct in the future, and any refusal to deliver possession of the personal property here involved when it had no interest in the personal property. The law recognizes the right of one to sell its property to a holding company. If one deals thereafter with the holding company, the transferer will not be liable for the acts or conduct of the holding company, such as we are considering here, namely, the refusal to deliver the property, or other acts other than the transfer to the holding company. The evidence does not show that at the time final demand for possession of the property here involved was made on June 4th, 1936, and until October the 15th, 1937, that the Manufacturers Trust Company was doing business within the state of Idaho, as the business here claimed to have been done between June 4th, 1936, and October 15th, 1937, and since the assignment was made on February 9th, 1932,

was by the **Huron Holding Corporation**. Thereafter the evidence produced here fails to show that the **Manufacturers Trust Company** was doing business in the State of Idaho, and the Court is without jurisdiction as to the defendant **Manufacturers Trust Company**, and the action as to it will have to be dismissed.

As to the defendant **Huron Holding Corporation** the evidence shows that at the times involved herein as to the unlawful detention of this property, and at the time the demand was made the **Huron Holding Corporation** was doing business within this state under the law, and it will be continued as to that defendant, and there is sufficient evidence to go to the jury on that.

As to the defendant **Turner** the evidence discloses that he was employed by the **Huron Holding Corporation** and was acting for that company, which I understand, is admitted, and I understand it is admitted that he is not liable. Therefore, the action is dismissed as to him.

I understand that the defendant **Lewis** has died since this action was commenced, and no substitution of any legal representative has been made. The result is on this ruling the defendant **Manufacturers Trust Company** is dismissed for want of jurisdiction, and the action is dismissed as to the defendant **Turner**; and that the action continues as to the defendant **Huron Holding Cor-**

poration, as the Court holds that it has jurisdiction as to it, and there is sufficient evidence to go to the jury as between the plaintiff and that defendant.

**MR. LANGROISE:** And may we have an exception as to the ruling of the Court on the dismissal of the Manufacturers Trust Company?

**THE COURT:** It will be allowed.

**MR. HAWLEY:** And may we have an exception as to the Court's holding and refusal to dismiss as to the **Huron Holding Corporation**?

**THE COURT:** You may have your exception. You may call the jury.

(The following proceedings were had in the presence of the jury:)

**THE COURT:** After hearing the motion of the defendant Manufacturers Trust Company the Court has sustained their motion and has granted the motion, ruling that it has no jurisdiction in the action as against that defendant, and it has also dismissed the action as to the defendant Turner, and the action continues for your consideration as to the defendant **Huron Holding Corporation**. You will also remember that the defendant Alexander Lewis has died, and that no substitution of any party has been made, and there remains for consideration by you in this case now as to the issues between the plaintiff and the defendant **Huron Holding Corporation**."

## INSTRUCTIONS TO THE JURY.

**THE COURT:** Gentlemen of the jury: As you doubtless understand, the investigation in which we have been engaged involved the question of whether or not the plaintiff is entitled to recover the reasonable market value and the rental value of the personal property described in the complaint; and I hardly need say to you that after listening to the trial of the case and the arguments of counsel, it is necessary to recall ourselves to the precise nature of our duty and responsibility as jurors and judges, that responsibility being to decide the issues and controversies fairly from the evidence and under recognized principles of law. The function you perform in cases of this kind, — the duty you perform is an important and necessary one. When you go to your jury room and come to consider your verdict you will law aside all suggestions which merely appeal to your feelings or prejudice or emotions, regardless of from which side they may have come in the case, and pass on it. Sometimes incidents inadvertently come into the trial of a case which really have no bearing upon it, and unless we are careful our judgment may be somewhat disturbed thereby. So when you come to the consideration of what your verdict should be you should be careful to confine that consideration to the evidence and all of the circumstances in evidence, and only the fair and legitimate inferences that may be drawn therefrom.

Now, the plaintiff alleges in substance in its com-

plaint that it is now and at all times mentioned in the complaint duly organized and existing under and by virtue of the laws of the State of Idaho; that the defendant **Huron Holding Corporation** is now and at all times mentioned in the complaint organized and existing by virtue of the laws of the State of New York, and has for more than a year last past been doing business in the County of Gem, State of Idaho, and that it does not have any designated person actually residing in Gem County, Idaho, or within the State of Idaho, upon whom process can be served; that the plaintiff was the owner and entitled to the possession of the personal property mentioned and described in the complaint which was at all of the times mentioned in the complaint situate in and upon that certain group of lode mining claims commonly known as Lincoln Mines in the West-View Mining District, in Gem County, Idaho, and that the reasonable value thereof is \$55,000.00; that on or about the fourth day of June, 1936, and before the commencement of this action the defendant **Huron Holding Corporation** having possession of the property, the plaintiff demanded of the defendant **Huron Holding Corporation** possession of the personal property, but defendant refused and still refuses to deliver possession thereof to the plaintiff, and that said personal property has been and now is wrongfully detained by the defendant **Huron Holding Corporation**, and that the cause of the detention thereof by that defendant is unknown to the plaintiff, and that the personal property has not been taken for taxes,



assessment or fine pursuant to any statute, or seized on execution or attachment against the property of the plaintiff; that by reason of the facts alleged in the complaint plaintiff has been damaged by the defendant Huron Holding Corporation in the sum of \$55,000.00, the value of the said property, and in the additional sum of \$100.00 per day for each and every day so wrongfully detained by the defendants.

The defendant Huron Holding Corporation takes issue with the plaintiff and in its separate answer alleges in substance: It denies the allegations set forth in paragraph two of the complaint, and that for more than a year last past it was doing business within Gem County, Idaho, and denies the allegations set forth in paragraph three, four and six of the complaint, and for an affirmative defense it alleges that the plaintiff, if it ever had any right, title and interest in and to the property described in the complaint, or any part thereof, did voluntarily abandon and surrender both title and possession thereof prior to three years before the commencement of this action, and prays that the action be dismissed.

Having disposed of these matters relating to the pleadings, let us address ourselves to a further consideration of certain principles of law which seem applicable to the issues and the evidence. The essential facts insofar as they are not admitted either by the pleadings or in the trial must be proved by satisfactory evidence, either positive or circumstantial, and a ver-

dict having no basis other than surmise or conjecture is unwarranted.

The plaintiff seeks to recover in this case on the contention that its personal property was unlawfully detained from it and therefore it was damaged.

It is a principle of law that if one takes personal property of another, or detains possession unlawfully and without the consent of the owner, he is liable to the return of the personal property to the owner, and in case a return was not made, the reasonable market value thereof after demand for the return of the property has been made.

The action is brought under the statute of the State of Idaho, and is commonly known as a claim and delivery statute, which permits the owner of the property to sue for the recovery of it, and if it is found that he is entitled to the return thereof, and return is not made after demand, the jury must find the market value of the property, and assess damages if any are proven by reason of the taking or detention of the property.

I will say to you further that if the owner or owners of the Lincoln Mines group of claims is found to be a bailee of the personal property found to belong to the plaintiff then the rule of law is that if they once had possession of the personal property the owner or owners of the Lincoln Mines group of claims are liable to the plaintiff for the personal property, unless they prove that possession of the personal property was lost

by accident or by some means beyond their control.

You are instructed that from the 4th day of June, 1936, if a demand was made upon the defendant Huron Holding Corporation for possession of the property that the plaintiff is entitled to damages for the detention and use of the personal property which was then in that defendant's possession, and the burden of proving what property was then in the defendant's possession is upon the plaintiff, as well as the burden of proving the amount of damages for the detention of the property is also upon the plaintiff.

I will say to you further that when in considering what property that is involved in this suit you will only consider the personal property mentioned and described in the complaint which you will observe therefrom, and not any additional or different property that may appear by the evidence, and I call to your attention the description of the property appearing in plaintiff's exhibit No. 12, for should there appear in that exhibit, or by any other evidence, additional or different property than that mentioned and described in the complaint, you should disregard it and confine your consideration to the property mentioned and described in this complaint. In this connection I am going to allow the complaint and answer to go to the jury room.

Now, the measure of plaintiff's damages for wrongful detention of the property is, if you find such to be the case, if the property had a usable value, the rea-

sonable value of the use of such property for the time of the wrongful detention to this date; if it had no usable value then interest at the rate of six per cent per annum upon its value at the date of wrongful detention from such date to this date, and this fact you are to determine from the evidence.

In determining plaintiff's damages for the unlawful detention of the personal property by the owner or owners of the Lincoln Mines group of claims you should consider the reasonable market value of the use or the reasonable rental thereof, and you should determine from a preponderance of the evidence what that reasonable rental value is, and fix the same, and in this connection if you find from a preponderance of the evidence that there was a reasonable market value for the personal property it makes no difference whether the defendant Huron Holding Corporation or the owner or owners of the group of mining claims ever used or had any use for such or any of such personal property.

Further, in determining the reasonable market rental value as in these instructions defined it makes no difference whether or not the owner or owners of the Lincoln Mines group of claims had any use or did in fact use any of the personal property during the period of the unlawful detention which is admitted to be from June 4th, 1936, to October 15th, 1937.

In determining plaintiff's claim for damages for the unlawful detention of such personal property you are

to consider all of the evidence produced in the case.

The reasonable value of the use of such property is to be estimated by the ordinary market price of the use of such property in the vicinity where said property is so situate.

The defendant admits that the owner or owners of what has been referred to in the trial as the Lincoln Mines group of claims located in West-View Mining District, Gem County, Idaho, were in the unlawful possession of the personal property of the plaintiff from June 4th, 1936, to October 15th, 1937, and I now instruct you that as a matter of law the plaintiff is entitled to recover from the owner or owners of such mining group of claims who refused possession of the personal property on June 4th, 1936, if you find such refusal occurred, the personal property, or in lieu thereof, the reasonable market thereof at the time of the unlawful detention, together with the reasonable market value of the use of the property during the period of detention from June 4th, 1936, to October 15th, 1937.

I will say to you further that the owner or owners of the Lincoln Mines group of claims has admitted that the personal property belonging to the Lincoln Mines Operating Company, the plaintiff herein, has been by such owner or owners unlawfully detained from June 4th, 1936, to October 15th, 1937, and therefore you are instructed that the plaintiff, as a matter of law, is entitled to recover for such unlawful detention.

If you find from a preponderance of the evidence that the personal property unlawfully detained by the owner or owners of the Lincoln group of claims has a rental value in the vicinity of Boise, Idaho, where the property is situate, you should return a verdict for the plaintiff for such reasonable market rental thereof.

The plaintiff in this action has alleged that it suffered a damage of \$100.00 per day by reason of the unlawful detention complained of. The plaintiff is therefore limited in its damages, if any you award, to that sum for the period of detention, and no more.

In passing upon the issues in this case the burden is upon him who asserts the existence of a fact to establish it, and in a civil action of this kind to establish by a preponderance of the evidence. The burden, therefore, is upon the plaintiff in the first instance to show by a preponderance of the evidence the cause or causes of action set forth in its complaint, and in determining the credibility to be given the testimony of any witness you have a right to take into consideration his interest, if any, in the result of the case, his demeanor on the witness stand, his candor or lack of candor, and all other facts and circumstances which would influence in determining whether or not the witness has told the truth. Bring to bear your common sense and experience in hearing the testimony and passing upon the credibility of the witness.

Preponderance of evidence does not necessarily mean the greater number of witnesses. It means the greater

weight of the testimony or evidence before you taken as a whole. This is the meaning of preponderance of evidence as accepted by the law.

It is necessary in this Court that all of you agree in finding a verdict. Two forms have been prepared and will be handed to you; one you will use in case you find for the defendant, and there it will be necessary only for your foreman to sign it; in the other form a blank is left for the insertion of the amount of damages, and that one you will use in the case you find in favor of the plaintiff.

Let the bailiff be sworn, and you, gentlemen, may retire with the bailiff.

That the Court continued in session until July 28, 1938; whereupon the Proposed Bill of Exceptions of the defendant, Huron Holding Corporation, and the Proposed Amendments thereto of the plaintiff were considered by the Court, and the plaintiff's proposed amendments were adopted and the Court thereupon ordered the Bill of Exceptions as amended to be engrossed and presented for allowance. Whereupon, on the 9th day of August, 1938, the Court still being in session and both parties having been notified, the Honorable C. C. Cavanah, Judge of the above entitled Court, thereupon settled the Bill of Exceptions and made an Order to that effect.

I, CHARLES C. CAVANAH, Judge of the United States District Court for the District of

Idaho, before whom the above entitled action was tried,

**DO HEREBY CERTIFY** that the foregoing Bill of Exceptions contains all of the facts, matters, things, proceedings, rulings and exceptions thereto occurring only upon the trial of said cause, and not heretofore a part of the record herein, including all evidence adduced at the said trial but not including proceedings, evidence or bill of exceptions upon hearing of motion to quash, service of summons and/or dismissal, or with respect to service of summons, jurisdiction or doing business; and

**I HEREBY CERTIFY, SETTLE AND ALLOW** the foregoing Bill of Exceptions as a full, true and correct Bill of Exceptions in the trial of this action and **ORDER** the same filed as a part of the record herein, **AND DO FURTHER ORDER** that the above and foregoing Bill of Exceptions is the Bill of Exceptions proposed, lodged, and served by the defendant, **Huron Holding Corporation**, as modified and amended by the plaintiff's proposed amendments thereto as allowed by me, the said Bill of Exceptions having been now duly engrossed by the defendant, **Huron Holding Corporation**, in the United States District Court for the District of Idaho, this 9th day of August, 1938.

**CHARLES C. CAVANAH**

District Judge.

(Service Acknowledged August 5, 1938.)



(Title of Court and Cause)

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**ORDER EXTENDING TIME FOR  
BILL OF EXCEPTIONS.**

Filed April 25, 1938

It appearing that the court at the expiration of the trial of the above entitled action did grant the defendant, Huron Holding Corporation, a period of sixty days in which to prepare, serve and lodge its proposed bill of exceptions, and it appearing further that the said defendant will require further time, and good cause appearing therefor, and the parties having expressly so stipulated,

**NOW, THEREFORE, IT IS ORDERED** that the defendant, Huron Holding Corporation have to and including the 1st day of July, 1938, in which to prepare, serve and lodge its proposed bill of exceptions.

**AND IT IS FURTHER ORDERED** that the plaintiff have forty days from the date of service of said defendant's proposed bill of exceptions in which to file its proposed amendments thereto.

Dated this 25th day of April, 1938.

**CHARLES C. CAVANAUGH**, District Judge.

(Title of Court and Cause)

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**ORDER FOR EXTENSION OF TIME FOR  
FILING BILL OF EXCEPTIONS.**

Filed June 28, 1938

Upon application of the defendant, **HURON HOLDING CORPORATION**, a corporation, and the stipulation of the parties thereto being filed, and good cause appearing therefor, **IT IS HEREBY ORDERED** that the defendant, **Huron Holding Corporation**, a corporation, shall have until and including the 20th day of July, 1938, in which to prepare, serve, and file its proposed Bill of Exceptions.

**DATED** this 24th day of June, 1938.

**CHARLES C. CAVANAH,**  
District Judge.

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(Title of Court and Cause)

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**PETITION FOR APPEAL.**

Filed May 31, 1938.

**COMES NOW**, the above named defendant, **Huron Holding Corporation**, and says:

That on or about the 3rd day of March, 1938, this court entered a judgment against this petitioner and

defendant and in favor of the plaintiff, in which judgment and proceedings had thereunto in this cause certain errors were committed to the manifest prejudice of this petitioner, as more fully appears by the petitioner's assignment of errors which is presented and filed herewith. That all further proceedings of this court be suspended and stayed and that said judgment be superseded until the determination of this appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner feeling itself aggrieved by the said judgment entered herein hereby appeals from and petitions this court for an order allowing its appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit under the laws of the United States in such cases made and provided, for the reasons specified in the assignment of errors, and for the correction of the errors there complained of.

WHEREFORE, your petitioner prays that an appeal in its behalf from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit be allowed and that an order be made fixing the amount of security for costs and supersedeas of the said judgment to be given by the appellant conditioned as required by law and staying execution and enforcement of said judgment pending the final decision of said appeal, and that citation may issue as provided by law, and that a transcript of the record proceedings and papers in the said cause, duly authenti-

cated, may be sent to the said Circuit Court of Appeals for the Ninth Circuit.

Dated at Boise, Idaho, this 27th day of May, 1938.

**JESS HAWLEY,**  
**OSCAR W. WORTHWINE,**  
Residence: Boise, Idaho,  
Attorneys for Defendant and  
Petitioner, **Huron Holding**  
**Corporation.**

(Service acknowledged May 27, 1938.)

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(Title of Court and Cause)

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### ASSIGNMENT OF ERRORS.

Filed May 31, 1938

COMES NOW, **Huron Holding Corporation**, a corporation, defendant and appellant in the above entitled action, by its attorneys of record, and makes and files with its petition for appeal in this case this assignment of the following errors, which it asserts and intends to urge on said appeal:

#### ASSIGNMENT OF ERROR NO. 1.

The court erred in denying the motion of the defendant to quash service of summons and dismiss the action on the ground that the said defendant had not

been served with summons or complaint in any lawful manner.

### ASSIGNMENT OF ERROR NO. 2.

The court erred in denying the said defendant's motion for a directed verdict in its favor on the ground that it had not been properly served with summons and complaint in accordance with the laws of the State of Idaho and was not within the jurisdiction of this Court and was not doing business in the State of Idaho at the time of the attempted service upon it.

### ASSIGNMENT OF ERROR NO. 3.

The court erred in sustaining plaintiff's objection to defendant's testimony as follows, to wit:

"MR. HAWLEY: I desire to offer as Exhibit No. 17 and No. 18 a chattel mortgage from the Lincoln Mines Operating Company to Mr. Phillips and an assignment by William I. Phillips to Helen S. Pearson. These are copies which I have here.

"MR. CASTERLIN: That is objected to, that is, both of the offers, as being incompetent, irrelevant and immaterial.

"THE COURT: Were they issued prior to June 4, 1936?

"MR. HAWLEY: Yes.

"THE COURT: What relevancy have they

here?

(Argument of counsel includes agreement that no objection is to be made because the exhibits are copies instead of the originals)

“THE COURT: The objection will be sustained.

“MR. HAWLEY: May we have an exception?

“THE COURT: You may have your exception.”

#### EXHIBIT NO. 17.

#### “CHATTEL MORTGAGE

THIS MORTGAGE, Made this 1st day of September, in the year of our Lord one thousand nine hundred and twenty-seven, by the Lincoln Mine Operating Company, a corporation duly organized and existing under the laws of the State of Idaho, the party of the first part to William I. Phillips of Miami, Dade County, Florida, the party of the second part, WITNESSETH:

That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, hereby mortgages to said party of the second part that certain machinery and personal property belonging to the party of the first part located in and upon what is known as the Lincoln Group of Mines situated in Gem

County, Idaho, to-wit:

One No. 64 $\frac{1}{2}$  Marcy Ball Mill

One Dorr Drag Classifier

One Farhrenwald Oscalating Classifier

Two McIntoshe Neumatic Flotation Cells

One Flotation Cell Air Blower

One 75 cubic Air Compressor

One 35 cubic Air Compressor

One Dorr Thickner 8x10 complete with Mechanism

One Dorr Dewatering Tank and Mechanism

One Portland Filter, 8x8

One 75 H. P. Electric Motor

Two 15 H.P. Electric Motors

One 10 H.P. Electric Motor

One 5 H.P. Electric Motor

Two 3 H.P. Electric Motors

One Dodge Sedan; Motor No. A32601, Serial No. A 904309, Idaho 1927 License No. 77741

Together with any and all other personal property belonging to the party of the first part, either mentioned herein or not, used in connection with the working and operation of said Lincoln Group of Mines;

And also any and all machinery and personal property added to the above described machinery and personal property, and hereafter acquired by the said party of the first part for use in the

working and operation of said Lincoln Group of Mines;

to secure the payment of Forty-five Thousand (\$45,000.00) & No/100 Dollars, according to the terms and conditions of one certain promissory note, in words and figures as follows, to-wit:

\$45,000.00     Boise, Idaho, September 1st,  
1927

On or before January 1st, 1929, after date, the Lincoln Mine Operating Company, a corporation for value received, promises to pay to the order of William I. Phillips Forty-five Thousand (\$45,000.00) & no/100 Dollars at the Pacific National Bank, Boise, Idaho, in Gold Coin of the United States of America, with interest thereon in like Gold Coin from date until paid at the rate of eight per cent per annum, interest payable at maturity.

And in case suit is instituted to collect this note, or any portion thereof, the said corporation promises to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

The maker, sureties, indorsers, and guarantors of this note hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest.

IN TESTIMONY WHEREOF, the  
Vice-President and the Secretary of said



corporation, under authority of a resolution adopted by its Board of Directors, have hereunto signed the name of the corporation and affixed its corporate seal.

(SEAL)                    LINCOLN MINE OPERATING COMPANY

By Henry W. Dorman,  
Vice-President

ATTEST: Henry O. Dorman,  
Secretary

It is also agreed that if the said party of the first part shall fail to make any payment as in said promissory note provided, then at the option of said party of the second part, his executors, administrators or assigns, the said note shall immediately become due and payable and said party of the second part may take possession of said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds to pay the whole amount in said note specified, and all costs of action or sale, including a reasonable sum as attorney's fees, paying the surplus to the said party of the first part.

IN WITNESS WHEREOF, the said party of the first part has caused its corporate name to be hereunto subscribed by its Vice-President and its corporate seal to be affixed hereto and these presents attested by its Secretary, the day

and year first above written.

(CORPORATE SEAL)

LINCOLN MINE OP-  
ERATING COMPANY

By Henry W. Dorman,  
Vice-President

ATTEST: Henry O. Dorman,  
Secretary

STATE OF IDAHO, }  
COUNTY OF ADA. } ss.

Henry W. Dorman, Vice-President of the Lincoln Mine Operating Company, a corporation, the mortgagor in the foregoing mortgage, deposes and says: That the foregoing mortgage is made in good faith and without any design to hinder, delay or defraud creditor or creditors.

Henry W. Dorman

Subscribed and sworn to before me this 7th day of September, 1927.

(SEAL) L. L. Sullivan  
Notary Public for Idaho  
Residing at Boise, Idaho

STATE OF IDAHO, }  
COUNTY OF ADA. } ss.

On this 7th day of September, in the year 1927, before me, L. L. Sullivan, a Notary Pub-

lic in and for said State, personally appeared Henry W. Dorman, known to me to be the Vice-President of the Lincoln Mine Operating Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate above written.

(SEAL)                    L. L. Sullivan  
                                  Notary Public for Idaho  
                                  Residing at Boise, Idaho

STATE OF IDAHO, }  
COUNTY OF GEM. } ss.

I hereby certify that this instrument was filed for record at request of N. Eugene Brassie at 35 minutes past 10 o'clock A. M., this 10th day of September, 1927, in my office, and duly recorded in Book 2 of C.M.R. as #4560.

Lillian M. Campbell  
Ex-Officio Recorder

Fees, \$ .50 cts.

STATE OF IDAHO, }  
COUNTY OF GEM. } ss.

I, Lillian M. Campbell, Ex-Officio Recorder in and for Gem County, State of Idaho, do hereby certify that the foregoing is a full, true

and correct copy of the original Chattel Mortgage No. 4560, executed by Lincoln Mine Operating Company to William I. Phillips, dated September 1st, 1927, and filed in this office at 10:35 o'clock A. M., the 10th day of September, 1927.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 3rd day of July, 1936.

(SEAL)

Lillian M. Campbell  
Ex-Officio Recorder  
Gem County, Idaho"

#### EXHIBIT NO. 18.

"This agreement made and entered into this the 6th day of August, A. D. 1929, by and between William I. Phillips of the County of Dade and State of Florida, party of the first part, and Helen S. Pearson, of said County and State, party of the second part;

WITNESSETH: That whereas the Lincoln Mine Operating Company, a corporation organized under the laws of the State of Idaho, did execute and deliver a certain chattel mortgage to the party of the first part on all of its machinery and equipment that it did own at the time of the execution of said chattel mortgage and any machinery and equipment it may become possessed of in the future;

And whereas the said chattel mortgage was de-

livered to the said party of the first party by the said Lincoln Mine Operating Company to secure the said party of the first part for the payment of certain money that the said party of the first part had loaned to the said Lincoln Mine Operating Company;

And whereas the said party of the second part has made certain loans to the said Lincoln Mine Operating Company and the said party of the first part desires to secure the said party of the second part for the payment of all loans made by the said party of the second part to the Lincoln Mine Operating Company and on any loans the said party of the second part may make to the said Lincoln Mine Operating Company in future.

NOW, THEREFORE, In consideration of the sum of One (\$1.00) Dollars each to the other in hand paid, and in the further consideration of the sum of Six Thousand One Hundred (\$6,100.00) Dollars, which the said party of the second part is about to loan to the said Lincoln Mine Operating Company, the said party of the first party hereby assigns, sets over and transfers unto the said party of the second part, all of his right, title and interest in and to the said chattel mortgage for the purpose of securing the party of the second part for the loan of Six Thousand One Hundred (\$6,100.00) Dollars

that the said party of the second part is now making, and all loans that have been made in the past or any loans that may be made in the future by the said party of the second part.

This agreement and assignment is made obligatory upon the heirs, executors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and affixed his seal this the day and year above written.

William I. Phillips (Seal)

Signed, sealed and  
delivered in the  
presence of us:  
Lora M. Wilson  
M. E. Howell

STATE OF FLORIDA, }  
COUNTY OF DADE. } ss.

Personally appeared this day before me, an officer authorized to take acknowledgements, William I. Phillips, who being sworn deposes and says that he executed the foregoing assignment of chattel mortgage for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Miami, Dade County, Florida, this the 6th day of August,

A.D., 1929.

Helen M. Haynes  
Notary Public  
State of Florida at Large

(Seal)

My commission expires: Dec. 13, 1932.

STATE OF IDAHO, }  
COUNTY OF GEM. } ss.

I hereby certify that this instrument was filed for record at request of M. W. Hallam at 30 minutes past 11 o'clock A. M., this 20th day of November, 1929, in my office, and duly recorded in Book 2 of Bonds and Agreements, page 426.

Lillian M. Campbell  
Ex-Officio Recorder

Fees, \$1.20

STATE OF IDAHO, }  
COUNTY OF GEM. } ss.

I, Lillian M. Campbell, Ex-Officio Recorder in and for Gem County, Idaho, do hereby certify that the foregoing is a full, true and correct copy of agreement and assignment executed by William I. Phillips to Helen S. Pearson as the same appears on page 426 of Book 2 of Bonds and Agreement Records of Gem County, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal

this 3rd day of July, 1936.

Lillian M. Campbell  
Ex-Officio Recorder  
Gem County, Idaho"

#### ASSIGNMENT OF ERROR NO. 4

'That the evidence is insufficient to support the judgment in the following particulars:

(a) That there is no substantial evidence that the mill or mining machinery could have been rented or used during the period of unlawful detention.

(b) That there is no substantial evidence that the milling and mining machinery could have been used or had a usable value during the period of detention.

#### ASSIGNMENT OF ERROR NO. 5.

The court erred in refusing to instruct the jury as requested by the defendant in the following written requests for instructions timely presented to the court and denied by it and an exception timely taken to the refusal of the court as to the giving of each of said instructions:

#### DEFENDANTS' REQUESTED INSTRUCTION NO. 2.

The jury is directed to return a verdict in favor of the defendant, Huron Holding Corporation, a corporation.

#### DEFENDANTS' REQUESTED INSTRUCTIONS



## TION NO. 5.

This action is brought under the statutes of the State of Idaho and is commonly known as a claim and delivery statute, which permits the owner of the property to sue for the recovery of it, and if it is found that he is entitled to return thereof the jury must find the value of the property and assess damages if any are proven by reason of the taking or detention of the said property.

You are instructed that the defendants in this action were not unlawfully detaining or possessing the property until such time as the plaintiff corporation made a demand for the possession thereof and refusal was had upon said demand. You therefore may not find any damages for the detention or for the use of the personal property if you find that it was detained or used in whole or in part for the period of time the property was upon the Lincoln Group of mines prior to the 4th day of June, 1936, and the plaintiff is not entitled to recover in this action for the use of said property if they did so use it prior to the 4th day of June, 1936.

## DEFENDANTS' REQUESTED INSTRUCTION NO. 8.

The jury are instructed that the possession of the machinery and equipment and personal prop-

erty involved in this action, insofar as it was in the possession of the defendants prior to June 4, 1936, was a legal possession and the defendants in whose possession said property was were mere bailees without hire and were not responsible for the care of said property, nor was it their obligation to see that it was not removed or stolen or used by any other persons than themselves and they were not responsible to keep or care for said property, except only such items thereof as they actually did use, and you are further instructed in this connection that this is not the proper action in which to determine the value of the use, if any was made by the defendants or either of them of said property or any part thereof prior to June 4, 1936, and you cannot assess damages for detention or use of said property or any part thereof by the defendants or any of them prior to said date.

#### DEFENDANTS' REQUESTED INSTRUCTION NO. 10.

You are instructed that to permit a recovery of the usable value of property during the time of detention, it must appear not only that the plaintiff had a legal right to use the property, but that it was in a position to use it, and intended to use it, and was prevented from such use only by the wrongful detention thereof. There should also be taken into consideration the matter of

whether or not the plaintiff would, or would not, have been able either to use or rent the property continuously during the period of detention. Therefore, if you find in this case that the plaintiff has not shown by a preponderance of the evidence that it would have used the property even if it had not been detained, you should award it no damages for loss of use, other than interest at six per cent on its value. Or, if you find that the plaintiff would have used the property only part of the time, you should award damages based on loss of use only for such time. In case the value of the use is less than interest at six per cent on the value of the property during the entire period of detention, you should award the plaintiff damages in the amount of such interest, but you must not award both interest and the value of the use.

**DEFENDANTS' REQUESTED INSTRUCTION NO. 11.**

You are instructed that in this case the plaintiff has failed to prove that it would have used the property had it not been detained by the defendant, and having failed so to prove the same, you are instructed that the only amount that you can allow for the detention is interest at the rate of six per cent per annum during said period of detention, said interest to be computed upon the value which you determine said property had.

**DEFENDANTS' REQUESTED INSTRUCTION NO. 14A.**

You are instructed that testimony was introduced by the plaintiff of the expenditures for mining and development purposes including erection of a mill and placing of equipment on the Lincoln Group of Mines. This testimony was admitted by the court only on the question of whether the defendant, Manufacturers Trust Company, was doing business in the State of Idaho, and you may not consider that evidence at all in arriving at your verdict on the question of damages.

**DEFENDANTS' REQUESTED INSTRUCTION NO. 14B.**

You are instructed that there is no evidence in this case on the value of the use of the mill and the mill equipment and, therefore, you cannot find in this case any amount for the detention of the mill and the mill equipment.

**DEFENDANTS' REQUESTED INSTRUCTION NO. 14C.**

You are instructed that before you can consider the rental value of any of the items of property you must find that the property could have been rented and that there was a market for the rental of said property.

**DEFENDANTS' REQUESTED INSTRUCTION NO. E.**

You are instructed that the defendants were never under any obligation to actually take any of the property of the plaintiff off of the Lincoln Mines Group and deliver it to the plaintiff. They were under legal obligation only to permit the plaintiff to reasonably enter upon the said Lincoln Group of Mines and remove plaintiff's property therefrom. The defendants' refusal to so permit the plaintiff to do began June 4, 1936, and ended October 15, 1937, and the plaintiff since the last mentioned date has had the right of possession and removal of said property, and the defendants' unlawful detention thereof ceased and under the law the possession of the property was returned to the plaintiff by the defendants on said October 15, 1937.

**ASSIGNMENT OF ERROR NO. 6.**

That the court erred in instructing the jury as follows:

"The reasonable value of the use of such property is to be estimated by the ordinary market price of the use of such property in the vicinity where said property is so situate."

And in also instructing the jury as follows:

"If you find from a preponderance of the evidence that the personal property unlawfully de-

tained by the owner or owners of the Lincoln group of claims has a rental value in the vicinity of Boise, Idaho, where the property is situate, you should return a verdict for the plaintiff for such reasonable market rental thereof.”

Which instructions were timely objected to on the grounds that they were inconsistent and not based on any evidence showing that the property could be rented or used during the period of detention.

#### ASSIGNMENT OF ERROR NO. 7

That the judgment and verdict were contrary to law in that the judgment fails to comply with the applicable provisions of the statutes of the State of Idaho, specifically Section 7-222, Idaho Code Annotated, which is as follows:

“Verdict in claim and delivery.—In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if being in favor of the defendant, they also find that he is entitled to a return thereof, must find the value of the property, and if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such

property.”

in that the said judgment and the verdict of the jury on which it was based did not find the value of the property detained by the defendant.

**JESS HAWLEY**

**OSCAR W. WORTHWINE**

Residence: Boise, Idaho,

Attorneys for Appellant,

Huron Holding Corporation.

(Service Acknowledged May 27, 1938.)

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(Title of Court and Cause.)

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**ORDER ALLOWING APPEAL.**

Filed May 31, 1938

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The defendant, Huron Holding Corporation, having this day filed its petition for appeal from the judgment in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, together with an assignment of errors, and having petitioned for an order to be made fixing the amount of security which defendant should give and furnish upon said appeal, and that upon the giving of said security all further proceedings in this court be suspended and stayed until the determination of said appeal;

NOW, THEREFORE, IT IS ORDERED that the said defendant, Huron Holding Corporation, on filing with the Clerk of this Court a good and sufficient undertaking in the sum of \$10,000.00 to the effect that if the defendant, Huron Holding Corporation, shall prosecute the said appeal to effect and answer all damages, interests and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and virtue, the said undertaking to be approved by this court, that all proceedings in this court be and they are hereby suspended and stayed until the determination of said appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 31st day of May, 1938.

CHARLES C. CAVANAH,  
District Judge.

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(Title of Court and Cause.)

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UNDERTAKING ON APPEAL.

Filed May 31, 1938

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KNOW ALL MEN BY THESE PRESENTS:  
That National Surety Corporation, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and authorized to



transact a surety business in the State of Idaho, is held and firmly bound unto Lincoln Mine Operating Company, a corporation, in the full and just sum of Ten Thousand Dollars (\$10,000.00), lawful money of the United States, to be paid to the said Lincoln Mine Operating Company, a corporation, its successors, or assigns, to which payment, well and truly to be made, the said National Surety Corporation, a corporation, binds itself, its successors and assigns, by these presents.

Sealed with our seal, and dated this 31st day of May, 1938.

WHEREAS, lately, at the February, 1938, term of the District Court of the United States, for the District of Idaho, Southern Division, in a suit pending in said court between Lincoln Mine Operating Company, plaintiff, and Manufacturers Trust Company, a corporation, Huron Holding Corporation, a corporation, Alexander Lewis, and Fred Turner, defendants, a judgment was rendered against the said Huron Holding Corporation, a corporation, on March 3, 1938, at the said term of court, and the said Huron Holding Corporation, a corporation, has petitioned for and been allowed, by the Hon. Charles C. Cavanah, Judge of the said District Court, an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a citation has been issued, directed to the said Lincoln Mine Operating Company, a corporation, citing it to appear in the said United States Circuit Court of Appeals for the Ninth Circuit, in the City

of San Francisco, State of California, within thirty days from the date of such citation.

NOW, the condition of the above obligation is such that if the said Huron Holding Corporation, a corporation, shall prosecute its said appeal to effect, and shall answer all damages, interest, and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

**NATIONAL SURETY CORPORATION.**

By: Geo. C. Walker,

Its attorney-in-fact. (SEAL)

**COUNTERSIGNED BY:**

Geo. C. Walker,

Its resident agent,

Residing at Boise, Idaho.

**APPROVED MAY 31st, 1938:**

Charles C. Cavanah,

United States District Judge.

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**GENERAL POWER OF ATTORNEY**

National Surety Corporation

(Attached to Bond.)

KNOW ALL MEN BY THESE PRESENTS, that NATIONAL SURETY CORPORATION, a Corporation, duly organized and existing under the laws of the State of New York, and having its principal office in the City of New York, N. Y., hath

made, constituted and appointed, and does by these presents make, constitute and appoint F. G. Ensign and Geo. C. Walker, Jointly or Severally, of Boise, and State of Idaho its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings; provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed Two Hundred Thousand (\$200,000.00) Dollars, and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following provisions of the By-Laws of the NATIONAL SURETY CORPORATION:

“Article XII. Resident Officers and Attorneys-in-Fact.

“Section 1. The President, Executive Vice President or any Vice President, may, from time to time, appoint Resident Vice Presidents, Resident Assistant Secretaries and Attorneys-in-Fact, to represent and act for and on behalf of the Corporation and the President, Executive Vice President or any Vice President, the Board of Directors, or the Executive and Finance

Committee may at any time suspend or revoke the powers and authority given to any such Resident Vice President, Resident Assistant Secretary or Attorney-in-Fact, and also remove any of them from office.

“Section 4. **ATTORNEYS-IN-FACT.** Attorneys-in-Fact may be given full power and authority, for and in the name and on behalf of the Corporation, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings, and any and all notices and documents cancelling or terminating the Corporation’s liability thereunder, and any such instrument so executed by any such Attorney-in-Fact shall be as binding upon the Corporation as if signed by the President and sealed and attested by the Secretary.

“Section 7. **ATTORNEYS-IN-FACT.** Attorneys-in-Fact are hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, or other conditional or obligatory undertakings, and they are also authorized and empowered to certify to copies of the By-Laws of the Corporation or any Article or Section thereof.”

IN WITNESS WHEREOF, the NATIONAL SURETY CORPORATION has caused these presents to be signed by its Vice-President and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this 28th day of May, A. D., 1937.

NATIONAL SURETY CORPORATION

By: S. G. Drake, Vice-President.

(SEAL)

ATTEST: A. N. MacDougall,  
Assistant Secretary.

STATE OF NEW YORK, )  
COUNTY OF NEW YORK. )<sup>ss.</sup>

On this 28th day of May, A. D. 1937, before me personally came S. G. Drake, to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is Vice-President of the NATIONAL SURETY CORPORATION, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order. And said S. G. Drake further said that he is acquainted with A. N. MacDougall and knows him to be an Assistant Secretary of said Corporation; and that he executed the above instrument.

(SEAL)

M. M. MILLER,  
Notary Public.

STATE OF NEW YORK, )  
COUNTY OF NEW YORK. ) <sup>ss.</sup>

I, A. T. HUNT, Resident Assistant Secretary of the NATIONAL SURETY CORPORATION, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said National Surety Corporation, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation, at the City of New York, N. Y., this 24 day of May, A. D. 1938.

A. T. HUNT,  
Resident Assistant Secretary.

(Title of Court and Cause.)

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CITATION ON APPEAL.

Filed May 31, 1938

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THE PRESIDENT OF THE UNITED  
STATES

TO LINCOLN MINE OPERATING COM-  
PANY, a corporation, and to WM. H. LANG-  
ROISE and ERLE H. CASTERLIN, its attor-  
neys,

GREETINGS:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to appeal duly allowed and filed in the Clerk's office in the District Court of the United States for the District of Idaho, Southern Division, wherein Huron Holding Corporation, a corporation, is appellant and you are appellee, to show cause if any there be why the judgment against said appellant as in said appeal mentioned should not be corrected and speedy justice should not

be done to the parties in that behalf.

WITNESS the Honorable Charles C. Cavanah,  
Judge of the said District Court of the United States  
for the District of Idaho, Southern Division, this 31st  
day of May, 1938.

CHARLES C. CAVANAH,  
United States District Judge.

ATTEST:

W. D. McReynolds, Clerk.

(SEAL)

Service of the above and foregoing Citation by re-  
ceipt of a copy thereof this 31st day of May, 1938, is  
hereby admitted.

WM. H. LANGROISE,  
ERLE H. CASTERLIN,  
Attorneys for Plaintiff.



(Title of Court and Cause.)

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PRAECIPE

Filed June 24, 1938

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TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare, print, authenticate, transmit and return to the U. S. Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, in accordance with the Act of Congress approved February 13, 1911 (28 U.S.C. 865-866), and the rules of court adopted thereunder, transcript of the record in the above entitled action on the appeal of the Huron Holding Corporation, a corporation, one of the defendants above named, to said court from the judgment made and entered in said action by the above entitled court on the 3rd day of March, 1938, which said appeal was duly allowed and filed in your office on the 30th day of April, 1938, and include in said transcript the following:

Amended Complaint.

Summons, and return thereon.

Notice of filing and hearing petition of removal.

Petition for removal.

Bond on removal.

Order of removal.

Notice of removal of cause and filing of record  
in the above entitled court.

Motion to quash service of summons on the **Huron  
Holding Corporation**, a corporation.

Order on motion to quash service of summons.

Opinion of court on motion to quash service.

Answer of **Huron Holding Corporation**.

Verdict.

Judgment.

Bill of exceptions to be hereafter settled and filed.

All orders extending time for settling and filing  
bill of exceptions.

All orders extending time for return under cita-  
tion on appeal.

All court minutes and journal entries.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Bond on appeal and approval.

Citation.

Copy of this Praecipe.

Your certificate and return.

Order for transmission of exhibits.

In preparing the above records, you will please omit

the title to all pleadings except the complaint, inserting in lieu thereof the words "title of court and cause" followed by the name of the pleading or instrument, and also omit the verification of all pleadings, inserting in lieu thereof the words "duly verified", and showing in each case fact and date of filing and acceptance of service.

DATED this 24th day of June, 1938.

JESS HAWLEY

OSCAR W. WORTHWINE

Residence: Boise, Idaho.

Attorneys for Defendant, Huron  
Holding Corporation, a corporation.

(Service Acknowledged June 24, 1938.)

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(Title of Court and Cause.)

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PLAINTIFF'S PRAECIPE FOR ADDITION  
TO TRANSCRIPT.

Filed July 6, 1938

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To: W. D. McReynolds, Clerk of the above entitled  
Court:

Please include the following additional portions of

the record in the transcript of the record on appeal:

1. Plaintiff's Amended Complaint.
2. Stipulation dated September 22, 1937.
3. Stipulation dated February 28, 1938.

And prepare, certify, return and transmit the same together with the and in the same manner as the record specified in the Praeceptum of the Huron Holding Corporation, a corporation, appellant herein.

W. H. LANGROISE,  
SAM S. GRIFFIN,  
E. H. CASTERLIN,  
Attorneys for Plaintiff.

(Title of Court and Cause.)

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CERTIFICATE OF CLERK

I, W. D. McREYNOLDS, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 231, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the Praecipis filed herein.

I further certify that the cost of the record herein amounts to the sum of \$280.45 and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this  
day of August, 1938.

W. D. McREYNOLDS, Clerk.

(SEAL)

